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EXAMINATION OF 22ND DISTRICT
AGRICULTURAL ASSOCIATION,

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REPORTER'S TRANSCRIPT

OF HEARING, BEFORE

SENATE, FACT FINDING COMMITTEE

on

GOVERNMENTAL ADMINISTRATION

DO NOT REMOVE FROM ROOM

May 16, 17, 18, 1960

VOLUME I

EXAMINATION OF 22ND DISTRICT
AGRICULTURAL ASSOCIATION

REPORTER'S TRANSCRIPT
OF HEARING BEFORE
SENATE FACT FINDING COMMITTEE
ON
GOVERNMENTAL ADMINISTRATION

MEMBERS OF THE COMMITTEE

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Vice Chairman
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HUGO FISHER

STAFF

EARL G. WATERS, Executive Officer
ALBERT E. SHEETS, Special Counsel

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SAN DIEGO, CALIFORNIA, MONDAY, MAY 16, 1960, 10:00 A.M.

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SENATOR ARNOLD: Ladies and Gentlemen, this is a meeting of the Senate Fact Finding Committee on Governmental Administration authorized under Senate Resolution No. 135.

At this time, I would like to introduce to you the members of the committee present. Starting on my left, Senator Hugh Donnelly of Modesto -- Turlock, and seated next to him, Senator George Miller, Jr., the Vice Chairman of the committee from Martinez, and immediately on my left, one whom I believe needs no introduction to you, Senator Hugo Fisher of San Diego. I am Stanley Arnold of Lassen-Modoc-Plumas of Susanville, Chairman of the committee.

Seated immediately on my right, Mr. Earl Waters, the Executive Secretary of the committee, and on my far right, Mr. Albert Sheets, Special Counsel of the committee, and seated in front of me on my left is Mrs. Martha Cole, Reporter, and on my right, Mr. Alan Randol, Reporter.

Some months ago, this committee was assigned by the Senate Rules Committee to make an examination of the management and operations of the 22nd District Agricultural Association, which is a State agency.

This examination was made and a report of the committee was published in which certain questions involving the leases and property management of the District were raised.

Specifically, the lease agreement between the 22nd District and the Del Mar Turf Club was questioned, and the committee, therefore, appointed, as Special Counsel, Mr. Albert E. Sheets of Sacramento to examine the lease agreements and to write an opinion for the committee.

Mr. Sheets submitted his opinion, which has been filed with the Senate as a supplemental report of the committee's examination of the 22nd District.

During the 1960 legislative session, Judge James Garibaldi, representing the Del Mar Turf Club, called upon me and requested a hearing for the purpose of providing the Del Mar Turf Club an opportunity to testify before this committee concerning their operations at the 22nd District.

It was not possible to provide such a hearing during the legislative session, but Mr. Garibaldi was assured the committee would schedule a hearing as soon after the session as possible. Shortly thereafter, the dates of May 16, 17, and 18 were agreed upon by the members and by Senator Hugo Fisher.

About two weeks after the dates had been set, Senator Fisher advised me there was some feeling in San Diego that the hearing should be postponed because it might adversely affect the success of the 1960 Southern California Exposition and Fair to be held at the 22nd

District late in June.

As Chairman, I endeavored to comply with Senator Fisher's request to postpone the hearing until after the Fair, but due to conflicts among the members of the committee and others involved with the hearing, it was not possible to reschedule the dates.

For this reason, I wish at this time to make it particularly clear that this committee has no desire to interfere in the operation of the Southern California Exposition and Fair. We understand you have a good show here, and we wish you to have a successful fair this year. Neither do we have any desire to preclude the people of San Diego from enjoying horse racing at Del Mar. It is not the purpose of this hearing to jeopardize either of these operations.

However, as a result of the examination conducted under the committee's supervision, deficiencies in management of the 22nd District were apparent, and it is our feeling that by airing these and other matters thoroughly, we can, by clearing the atmosphere, assist the district in operating hereafter in a more businesslike way, and we believe this will be beneficial to all concerned. At the same time, our examinations of other fairs have disclosed certain problems common to all of our State Fairs.

We have asked representatives of the Department of Finance to attend here for the purpose of determining where the legislature can assist the Department in improving

the Fair operations generally.

These hearings, therefore, are held, not for the purpose of fault-finding, but rather for the constructive purpose of learning more about the problems of the Fairs so that the Legislature and those responsible for the management of the Fairs can work together towards the goal of betterment of the Fair program in this State.

Now, on our agenda this morning, we have called the representatives of the Del Mar Turf Club. I am informed that we have Mr. Donald Smith, Mr. William Moore, Mr. Allen Sutherland, Mr. Tom Douglas, Mr. John Quimby, Mr. Ewart Goodwin, Mr. George Scott, who will make presentations before the committee, and that there are also present Mr. Robert Oakes and Harry Horton of the Del Mar Turf Club and Mr. Walter Ely of Boys Incorporated and Mr. George Anson, general counsel for Boys Incorporated, of Dallas, Texas, and with that preliminary remark and our opening, I will call at this time on Mr. Donald Smith.

At this time, I would like to ask if there is anybody present under subpoena who wishes to be excused at this time? If none, we will proceed.

MR. WATERS: Mr. Chairman.

THE CHAIRMAN: Mr. Waters.

MR. WATERS: Mr. Donald Briggs, a member of the Board of Directors of the 22nd District, advised me that he is under subpoena in a civil matter as an expert witness for

Wednesday, and requested that he be excused for that date, and if we wished him to testify, if we could call him before that time.

THE CHARIMAN: Thank you, Mr. Walters. That will be the order of the committee.

MR. WATERS: Mr. Chairman, also Mr. Louis Lipton, a former member of the Board of Directors and immediate past president of the Board of Directors of the 22nd District, advised me that he wished to be excused from being under subpoena for part of the hearing. I would request that he be advised that he will be excused for any part of the hearing that he wishes, so long as he clears with us as to when he wishes to be available to testify.

MR. FLETCHER: Mr. Chairman, I am Mr. Fletcher, a former director. I wish the same request, if I may.

THE CHAIRMAN: Your request will be granted by the committee, Mr. Fletcher.

For the record, I wish to state that Mr. Franklin Barnes, a director, has also requested that he be excused because of a previous arrangement that he made for a trip to Europe, and which we did not wish to work a hardship upon him, has been excused.

Mr. Smith, could you come over and sit down closer to this and be more comfortable and we have a microphone over here.

Mr. Smith, while you are standing, please, would you raise your right hand and be sworn.

DONALD B. SMITH,

having been first duly sworn, was examined and testified as follows:

THE CHAIRMAN: Now, for the record, will you state your name, please?

THE WITNESS: Donald B. Smith, President and General Manager of Operating Company, Del Mar Turf Club.

Chairman Arnold, Members of the Committee on Governmental Administration and Staff, I am very glad to have the opportunity to be with and talk to you and present some of the facts as we see them. It might help you in making a proper determination of any of the questions that might be raised in this hearing. I have been in this business for quite a long time and am so involved and so wrapped up in so many of its affairs, that if I talked purely ad lib, I could get off on subjects for, some people say, days at a time, so for the sake of brevity, conciseness, I have prepared most of my statement in writing and will try to follow it in that way to save time for you gentlemen and the people here.

THE CHAIRMAN: Well, Mr. Smith, now, I note that you have very thoughtfully had printed and bound a statement which you released, I believe, under date of May 4th, was it?

THE WITNESS: That's right.

THE CHAIRMAN: For filing with the committee. We are pleased with your consideration in that regard. We

accept the report for the record of the committee, and if there is any further verbal remarks that you wish to make in extension of it, why, we will be pleased to receive them.

THE WITNESS: Yes, that is what I had in mind, in carrying out -- more or less augmenting the report of additional information and additional points that I wish the committee would consider.

THE CHAIRMAN: Thank you, Mr. Smith. You may proceed.

THE WITNESS: In fact, I was very glad to have had the opportunity to be with you yesterday when you made your tour of the grounds and facilities of the 22nd District Agricultural Association, the site each year of not only the San Diego County Fair and the Southern California Exposition, but also of the summer racing season at Del Mar. I think you will agree it's a rather attractive and beautiful spot, and besides the physical facilities that you saw yesterday, you also saw a substantial interim use.

This is kind of a San Diego play ground. Besides the sports car races and dog shows, you have frog jumping contests, and you have company picnics, union picnics, basketball games, dances, and conclaves of many varied large groups; and also the regular week-day activities such as the nursery school and the weaving classes.

We in San Diego are proud of those Fair Grounds and of the pleasure it brings each year to

thousands and thousands of our citizens as well as visitors. We of the Turf Club are very proud of the part that racing has played in making all of this possible. The facilities you saw yesterday were born in 1936, during the depression years.

The first funds were furnished by W.P.A. grant, some five hundred thousand dollars. Before the building program could be completed, the District was in financial difficulties and the State was in no position to help.

My sister was a school teacher at that time, and perhaps you remember, we were paying the teachers with State warrants, IOU's.

Through the efforts of Bing Crosby and Pat O'Brien and some of his wonderful associates, some of them gone now, such as Wallace Beery, Charlie Butterworth and Charlie Howard, people like that, some six hundred thousand dollars was made available to the District to complete the construction of the Fair Grounds. There was no obligation on the part of the District to repay this advance except out of rentals from racing.

The first few years were very lean years and many of the people who had invested in the racing operation, or who had advanced money for the benefit of the District, wondered if they would ever get it back. For example, in 1939, the profit of the racing operation was three hundred fifty-nine dollars.

Incidentally, the rent of the District that year was almost \$52,000. There was no talk about sharing profits in those days or wanting more rent. There was something about going through hard times together that brings a closeness and a desire and willingness to work together. This genuine spirit of cooperation was the foundation upon which the fairgrounds at Del Mar was built and the guiding factor in the relations between the District and the Turf Club for twenty-three years.

After almost twenty-four years, we are told this was all wrong; it is inferred there was something sinister about it. I know this is not true. I was an original stockholder of the Del Mar Turf Club and very close to the original management, first going on the Turf Club Board of Directors in 1945.

There was an extension of the lease in 1945 and again in 1953, so that it now expires in 1969. There were numerous other agreements over the period of the lease, which you have documented as exhibits in the Supplemental Report of the Committee. All of these agreements were negotiated by the 22nd District Board and the State Department of Finance on the one hand, and by the Del Mar Turf Club on the other hand. Each one was carefully reviewed at the time, both for economic soundness as well as legal validity.

From the humble and sometimes desperate

beginning and through the course of the various extensions and legal documents, what has happened?

The District has grown and prospered and the Turf Club has grown and prospered. The District, with the possible exception of the Los Angeles County Fair, is by far the most financially sound Fair District of all the other seventy-eight Fair Districts in California. It provides San Diego County and the State of California with one of the finest fairs and expositions in this State and with the largest horse show, from the standpoint of entries, in the country.

It has completely paid for its plant as of October 1, 1959, and had some \$500,000 in the bank and owed nothing but current bills, and is showing an annual profit of \$200,000.

The Turf Club has also done well. Over the years, it has grown so that it is now the third largest racing association west of the Mississippi from the standpoint of pari-mutual handle. Since rental to the District and commissions to the State are a percentage of the mutual handle, the income to the District and the State of California has increased proportionately over the years.

The rent in 1937 was \$37,000. In 1959, it was \$391,000, an increase of more than 1,000 percent. The mutual commission to the State was about \$89,000 in 1937 and almost \$3,000,000 in 1959.

Gentlemen, we are proud of this record, the only major racing operation in California that has shown a

substantial and steady increase since 1946. We are proud of our position in the community and in the racing industry.

I believe it is firmly established that the grounds and facilities of the District leased to the Turf Club constitute a fairgrounds which includes a race track. Under the lease, the Turf Club has the right to use and possess the race track facilities for approximately eighty days, forty-two days of racing, with seven or eight intervening Sundays and thirty days for preparation and cleanup. The remaining two hundred eighty-five days of the year, the Turf Club has no rights of use or possession, except the right to use a suite of administrative offices and a shop building.

For this use, the Turf Club pays the District a rent equal to $12\frac{1}{2}\%$ of its share of the pari-mutual handle. Last year, the rent was \$391,000, and is, I repeat, a 1,000 percent increase over the first year of \$37,000. Over the life of the lease, the Turf Club has paid more than \$5,400,000 in rent to the District.

In addition to the rent, there are many other benefits that have accrued to the District and at the expense of the Turf Club.

\$100,000 was paid as consideration for the original lease and \$100,000 was paid for the 1945 extension.

Approximately a half million was expended by

the Turf Club and Caterers for permanent building and ground improvements, all now owned by the District, for which there was not to be reimbursement. This does not include substantial but undeterminable amounts spent by the Turf Club for improvements which were an expense for the Turf Club and capitalized by the District, such as fill, grading, drains, and so forth. Before the maintenance agreement was signed, many of the plantings, permanent shrubs and big trees were put in by the Turf Club.

Approximately \$1,500,000 was loaned by the Turf Club to construct permanent improvements, which was not repaid for many years, and for which no interest was charged, and also there was no obligation to repay on the part of the District, except by way of offset from rentals payable to the District by the Turf Club.

Under the provisions of the 1953 extension to the lease, the Turf Club has maintained a substantial portion of the fairgrounds on a year-around basis. The map is pretty far away, but it indicates, if I may point it out to you, this entire area, including all this (indicating), is the area I am speaking about; it represents about two hundred acres, fifty-five buildings, about 515,000 square feet of floor space.

For this, the District pays us \$35,000 per year, a price established in 1953, and in effect until 1969. The Turf Club has to absorb all increases in material and labor

costs. The annual net cost to the Turf Club for this housekeeping arrangement during the non-racing season only has been between a hundred and thirty thousand and \$150,000 per year. The Turf Club pays all taxes and insurance, such as fire and comprehensive coverage on all buildings in the area under its maintenance.

The Turf Club has allowed the District to use, without charge, or rent, general equipment, furniture and fixtures owned by the Turf Club and representing a cost of more than \$200,000.

It is customary in leasing race tracks to compute rental on the basis of the pari-mutual handle. It is the most consistent and productive constant that can be mathematically determined. It is machine-computed and audited daily. It has a direct relation to all other phases of the business.

The value of the pari-mutual handle as a constant must have been recognized by the State, as it is the only basis for the commission paid to the State. The pari-mutual handle is the basis for the distribution of purses and breeders fees to horsemen. This is not only true in California, but every other state in the country where there is racing with pari-mutual wagering.

All of this must have been analyzed when the lease between the 22nd District and the Turf Club was drawn up in 1936. The rent was computed on the basis of

twelve and a half percent of the pari-mutual handle, payable at the close of the racing day, just as is the commission to the State. The reason is obvious. It is a figure that no one can argue with; it can be determined quickly and accurately.

Anyway, the formula for the lease is not as important as the actual rent received, the total amount paid for the facilities, considering extent of use and value of property. By subsequent expert testimony, we will show that the rent paid to the District by the Turf Club is more than fair. Most businesses would be pleased to get the return the State receives.

The study of comparative race-track leases, as presented in the written report submitted to you, shows that the pattern of the lease here at Del Mar is consistent with industry practice, and to the landlord, more generous in its terms.

The very fact that the lease formula, under which Golden Gate Field pays rent to the Atchison, Topeka & Santa Fe Railroad, would bring less rent to the 22nd District than the formula under which we operate, is substantial evidence that the State has a good lease here and the rights of the citizens of California are fully protected.

The formula under which Western Harness pays Hollywood Park in Santa Anita would produce \$100,000 less to the District than it receives under the existing formula. There

are other advantages to the lessees in these comparative leases, and they are outlined in our written report.

SENATOR MILLER: Mr. Chairman, do you wish --

THE CHAIRMAN: Senator Miller.

SENATOR MILLER: Do you wish we refrain from questions until the gentleman is finished, or can we interrupt at any time?

THE CHAIRMAN: I think in the interest of time, Senator, that if you would make a notation of your question --

SENATOR MILLER: All right. Thank you.

THE CHAIRMAN: -- we will take it up afterwards.

THE WITNESS: In addition to the rentals paid to the District and the benefits to the community in having these fairgrounds available for the many uses I have already outlined, and of which you saw evidence yesterday, in addition to all of this, Operating Company, of which I am President, pays ninety percent of the profits from its racing in rent to Boys Incorporated, a non-profit charitable corporation.

The sale of the lease in 1954 to Boys Incorporated was expressly approved by the Attorney General's Office, then under our present Governor, Pat Brown. This approval stated that all of the documents had been reviewed and the interests of the State of California were fully protected.

There has been a lot of talk about competition for racing dates between the District and the Turf Club. This has all been news to us. The District has never applied for

dates and for many good reasons, the main one being that it simply was not good business to do so.

Under the existing lease with the Turf Club, the District shows an annual profit of about \$200,000, a much larger profit than shown by any other fair in California, and many of those have horse racing at their fair.

The validity of the original lease from the District to the Turf Club in 1936 has been questioned on the theory that in 1936, the District did not have the power to make such a lease. Over the years, there have been some sixteen legal documents between the District and the Turf Club, including the original lease. All of these documents pertained to the use and occupancy by the Turf Club of the racing facilities on the fairgrounds.

The original lease, and all of the subsequent agreements concerning the race track, have had the approval of the various attorneys general, starting with U. S. Webb, and including present United States Chief Justice, Earl Warren, and the present Governor of the State of California, Edmund G. "Pat" Brown.

We firmly believe the lease between the District and the Turf Club is valid, and it is fortunate for the people of the State and County that our lease is valid, because if it were not, the State and local economy would suffer an irreparable loss -- \$3,500,000 per year in fees and taxes to the Federal Government, the State, the 22nd District, the

County of San Diego and the City of Del Mar; almost seven million dollars per year to the general economy of the area, and more than \$500,000 per year to charity.

Under the existing law in California, the District is prohibited from leasing its racing facilities to a private person or persons. Our lease is the exception, because it was created before the present law came into existence. There has been some talk about changing the law so that the 22nd District could make a lease to third parties. I believe we all agree that this will take legislative action. Perhaps the law can be changed, but my plea to you is this: Change the law first, change the law before the existing lease is jeopardized and you undermine the confidence of the people in the integrity of our lease.

I do not believe it is asking too much of your committee to consider all the people involved. Don't gamble with \$11,000,000 of annual economic benefits that belong to the people of this area and which they need.

Thank you, gentlemen.

THE CHAIRMAN: Thank you, Mr. Smith.

Mr. Waters.

EXAMINATION

BY MR. WATERS:

Q You stated, Mr. Smith, that you were President and General Manager of Operating Company, Del Mar Turf Club?

A Right.

Q Would you please tell us what that is?

A Well, Operating Company is the official name of the company; we use the name "Del Mar Turf Club" as the familiar name known to all people.

Q Then, Operating Company, Del Mar Turf Club is not a correct name, or a legal entity?

A Well, I would say Operating Company is the proper name. Maybe you can explain that, Mr. Oakes, as far as the legal entity is concerned. I am kind of lost on that.

Q How long have you held that position?

A Could our attorney answer the question? I mean, it's a legal question. I don't know the answer, frankly, sir.

Q Well, we will ask that question of the attorney. Okay, how long have you held that position, Mr. Smith?

A Since the spring of 1955.

Q And as President and General Manager, your responsibility is the operation of the race track; is that correct?

A Right.

Q What previous experience did you have, sir?

A I was on the Board of Directors from 1949 through 1950 of the Del Mar Turf Club. I went through five administration changes, and I was President from 1949 through 1950.

Q Did you have any previous experience as the

administrator of a race track?

A No, not as the sole administrator, just as part; as President, I had part power. I mean, at the present time we only have one office.

Q What is your salary, Mr. Smith?

A \$35,000 a year.

Q Did you receive a letter from me, requesting certain information as to the officer, directors and stockholders of Del Mar Turf Club, Operating Company and Boys Incorporated?

A Yes, I did.

Q Do you have that information at this time?

A I am sorry to say it's on my desk. I juggled my files around so much, that when I came around and looked for it -- I know where it is; it's not with me. I could bring it in.

Q Could you tell the committee who the officers, directors and stockholders are of Del Mar Turf Club?

A You mean Operating Company?

Q No, sir. I mean Del Mar Turf Club.

A That I -- Wait, the Del Mar Turf Club? I misunderstood you. I am sorry. I have nothing to do with the Del Mar Turf Club records. That's in a state of dissolution, if I am correct. There again, my attorney could answer that. I can't.

Q Could you tell us the officers, directors and stockholders of Operating Company?

A Yes. William R. Hawn is Chairman of the Board. Donald B. Smith is President, Wade Ambrose, Vice-President, Robert Oakes, Secretary-Treasurer. Directors are -- the following are just Directors: Rex Ellsworth, Edward Crawley, and Mrs. Ann Peppers, or Mrs. Thomas Peppers, I mean.

Q Who are the stockholders?

A They are exactly the same, except Mr. Ambrose is not a stockholder and a Mr. William Dunham is a stockholder; otherwise, they are the same as your officers and directors.

Q Mr. Dunham and who else?

A William Dunham, he would replace --

Q Mr. Ambrose is not a stockholder?

A That's right. That's right.

Q Can you tell us what the stock interests are of each?

A Yes. Mr. W. R. Hawn, fifty-five shares; Smith, twenty, and five each for the rest of them.

Q Can you tell us the officers, directors and stockholders of Boys Incorporated of America?

A No, sir. We are -- we are separate entities entirely. There are people from Boys Incorporated here who I am sure can answer these.

Q Do you have the annual financial statements for each of these corporations?

A I have the financial statements for Del Mar -- for Operating Company only.

Q For Operating Company?

A Yes.

Q You wish to present that at this time?

A Mr. Burns. This is Mr. John Burns, Controller of Operating Company.

(Whereupon Mr. Burns presented the records to the Chairman).

THE WITNESS: These are the only copies in existence of some of these documents, so if you would like to have copies, could we make copies and have them available? These are the old Del Mar Turf Club, carrying through from 1937 up through 1959, when it became Operating Company. There is one year in '54 when they changed the fiscal year, in '54, I believe it was, and we have one-half of one that is missing, but otherwise, that's our complete records. We can have --

THE CHAIRMAN: You wish then, Mr. Smith, to make copies and submit them later to the committee?

THE WITNESS: If we could, yes, sir. These are all on file with the Horse Racing Boards and also with the Department of Finance.

THE CHAIRMAN: Thank you, Mr. Smith, that will be satisfactory.

THE WITNESS: Okay, if we may; thank you.

MR. WATERS: Mr. Chairman, may I request that Mr. Oakes be called as a witness, jointly with Mr. Smith, at this time for the purpose of ascertaining the information with reference

to other corporations?

THE CHAIRMAN: Yes. Mr. Oakes, would you comply with that request, please, and answer the questions?

MR. WATERS: I think, Mr. Oakes, you should bring your chair and sit over here.

I understand Mr. Oakes is an attorney. I believe there is a custom in San Diego and elsewhere that we don't require the presence of an attorney under oath.

MR. OAKES: Thank you, sir.

ROBERT A. OAKES,
called as a witness, was examined and testified as follows:

EXAMINATION

BY MR. WATERS:

Q Mr. Oakes, can you tell us the officers, directors and stockholders of the Del Mar Turf Club?

A No, sir.

Q Are you the attorney for the Del Mar Turf Club?

A No, sir.

Q Who is?

A Well, the Del Mar Turf Club has ceased doing business since 1954. At that time, C. Ray Robinson was the attorney for the Del Mar Turf Club. Whether he still is or is not, I do not know.

Q In the relationship -- you are then the attorney

for Operating Company; is that correct?

A Yes, sir.

Q In your relationship, as attorney for the Operating Company, who do you do business with insofar as Del Mar Turf Club is concerned?

A We have had no business relations with Del Mar Turf Club since I have become attorney for Operating Company.

Q Could you explain, please what Mr. Smith's reference is, and what the reference is on this statement submitted to the committee, "Operating Company-Del Mar Turf Club"?

A Yes, sir, Operating Company is a California Corporation for profit that uses the tradename "Operating Company-Del Mar Turf Club".

Q Is it filed anywhere under that name?

A No, sir.

Q That is just a name that has been assumed by Operating Company?

A That's a name that we have used as our tradename ever since we started doing business in 1954.

Incidentally, it is my understanding that this was with the permission of the Del Mar Turf Club, the old Del Mar Turf Club, and I have seen a certified copy of the Resolution of the Board of Directors of the old Del Mar Turf Club giving permission to Operating Company to use the name "Del Mar Turf Club" as a tradename.

Q Do you also represent Boys Incorporated?

A No, sir.

Q Who does?

A George Anson is the General Counsel for Boys Incorporated, and Mr. Walter Ely is Special Counsel for the Boys Incorporated for -- at least, for the purposes of this hearing and other purposes that I may not know about.

Q And Mr. Ely is here?

A Yes, sir.

Q Mr. Smith, have you prepared a statement showing all payments made between the Turf Club and Operations -- and/or Operating Company to the 22nd District during the entire period of the existence of each?

A BY MR. SMITH: No, sir, we have not as yet.

We got the letter on the -- on Wednesday, which would be the 10th. These figures are all on file with the Division of Audits in the form of a booklet each year. They take six weeks, two men each, to go through the records of the Del Mar Turf Club; to get the records you have requested, would take approximately 140 weeks. We would have to go through every cash transaction, disbursal and receipt, for a period of twenty-three years, and it is just impossible to do in a matter of two or three days.

In fact, since it is a matter of record of the State of California as part of its official records, it would seem to be putting an awful burden on us to ask us to do it again.

Q Where are such records kept, Mr. Smith?

A You mean at the Del Mar Turf Club?

Q No, sir. You say it is a matter of record with the State.

A Well, the Division of Audits and Department of Finance, and also the California Horse Racing Board has them on file.

Q I don't believe that any of those agencies, including the 22nd District, have accurate records as to the transactions between the District and the Turf Club.

The reason that you were requested is certainly your books should reflect both the payments and the receipts between the two agencies.

A May I show you this book? It is the only one we have, this; we have never gotten them except on special request. We have asked for them from the Division of Audits. This is one of them. It is the most complete financial statement you have seen in any business, far more than any other business puts out. This has been done by your own auditors in the Division of Audits. They have gone through. It is a complete breakdown, and they are on file in Sacramento.

Incidentally, Mr. Waters, we have requested from the Division of Audits, copies of all those reports, and we haven't received them. It was only -- I sent the letter on Thursday or Friday. I haven't had a chance to hear from

them, but we wrote directly to the Division of Audits to see if we couldn't get copies of all years.

Q Mr. Smith, you stated that you were a stockholder in Del Mar Turf Club?

A No, Operating Company. I was a stockholder, yes, in the original Del Mar Turf Club.

Q Are you still a stockholder in Del Mar Turf Club?

A No, the Del Mar Turf Club stock was all settled in '54 when it was dissolved. I sold my stock in -- around that time.

Q There was a distribution of assets of Del Mar Turf Club in '54?

A Mr. Oakes, can you answer that question for them?
They got my money.

A BY MR. OAKES: Well, I question whether I should testify concerning whether what happened in 1954 -- at that time, I had no connection with any of the corporations that were involved, and all that I could tell you about what happened in 1954 would be hearsay that I learned the following year.

Q Well, Mr. Smith, as a stockholder -- Mr. Smith, as a stockholder, should know whether or not there was a distribution of assets in a corporation in which he is a stockholder?

A BY MR. SMITH: Well, I will tell you how it came

about then. I got a letter in the mail. At that time, I owned two and 13/16ths shares, which represented the total from one share of original stock. In other words, there had been two stock splits over the years. I got a letter in the mail and asked if I would sell my stock for \$400, because they wanted to carry out this Boys Incorporated program. I signed it, said "yes," signed a certificate and got my check. What happened to that, I don't know. I was paid in full. I was selling my stock. I was receiving nothing in the way of a dissolution, liquidation dividend; it was purely a stock sale.

Q To whom did you sell?

A I don't remember, sir, offhand.

It was -- I couldn't tell you now. I didn't think about it at the time. It wasn't that important.

THE CHAIRMAN: Mr. Oakes, might I interrupt? At the moment, this committee has no objection to hearsay, so we would appreciate it if you would go ahead and tell us what your information on this matter is.

MR. OAKES: I have a suggestion, Mr. Chairman. Mr. George Anson, attorney for Boys Incorporated, I am sure participated in some, if not all, of these legal transactions that took place in '54, and I think that he would be the proper witness to answer questions along this line.

THE CHAIRMAN: Thank you.

Q BY MR. WATERS: Mr. Smith, who were the officers

and directors of the Del Mar Turf Club at that time?

A BY MR. SMITH: Frankly, I don't remember. I would have to look up the records on that. I only had two and 13/16ths shares.

Q What was the par value of those shares?

SENATOR FISHER: Just a moment, Mr. Smith.

THE CHAIRMAN: Senator Fisher.

SENATOR FISEHR: Were you not on the Board of Directors of Del Mar Turf Club at that time?

THE WITNESS SMITH: No, sir.

SENATOR FISHER: You were never?

THE WITNESS SMITH: I resigned from the Board of Directors of the Turf Club in October of 1950.

SENATOR FISHER: Thank you.

THE CHAIRMAN: I have a question, Mr. Smith.

Was there any change in the Boards of Directors or stockholders of Del Mar Turf Club between 1950 and '54?

THE WITNESS SMITH: At least one substantial one I know of about the time that Mr. Al Hart took a controlling interest, and there was quite -- were quite a few changes at that time.

THE CHAIRMAN: Then, could you tell us who the members were in 1950?

THE WITNESS SMITH: I will have to go back in my records again. It was ten years ago. To remember all the Directors, I don't know -- Joseph Schenck, Al Hart, Joseph Paley, Tom

Peppers, Thomas Peppers. That's all I can think of right now. I would have to check my records. I haven't thought about it for a long time.

Q BY MR. WATERS: The par value of the stock that you had was what?

A BY MR. SMITH: The stock was sold for a hundred dollars a share in 19 --

THE REPORTER: Sold for what?

THE WITNESS: One hundred dollars a share in 1936.

Q BY MR. WATERS: And you had two shares plus what?

A BY MR. SMITH: 13/16ths of a share.

Q Mr. Smith, about 1956, the County Assessor levied a tax on your possessory interest; is that correct?

A Correct.

Q Did you pay any property taxes prior to that date?

A We paid on personal property taxes.

Q But you did not pay any real property taxes prior to that time?

A I couldn't answer that offhand. It is my understanding we didn't pay any -- any real property taxes, just our personal property taxes before that.

THE WITNESS OAKES: You want me to answer that?

THE CHAIRMAN: Yes, Mr. Oakes, if you can.

THE WITNESS OAKES: Operating Company does not now, nor has it ever, during its existence, owned any real property.

Q BY MR. WATERS: Well, Mr. Oakes --

A BY MR. OAKES: We have a possessory interest under this lease, which is assessed as a possessory interest, and 1956 was the first year that the assessor levied an assessment on this possessory interest.

THE CHAIRMAN: And it has been paid since 1956 then?

THE WITNESS OAKES: Yes, each year thereafter, a possessory interest tax has been levied by the assessor and paid by Operating Company.

SENATOR FISHER: You do consider this a sub-lease, do you not, under the instrument of 1953, I believe it is?

THE WITNESS OAKES: Under the instruments of 1954, yes, sir, we do consider this a sub-lease.

SENATOR FISHER: And to that extent you have an interest in real property, whatever -- whatever it shows in the sub-lease, it is a leasehold interest?

THE WITNESS OAKES: Well, under our tax laws, as administered by our Tax Collector, they call it a possessory interest.

SENATOR FISHER: I am trying to get that distinction. You are talking in tax terms, but as to the -- as to real property law, you do consider it a sub-lease, don't you?

THE WITNESS OAKES: Yes, sir.

Q BY MR. WATERS: Mr. Smith, does Operating Company operate for a profit?

A BY MR. SMITH: Yes, Operating Company is a

profit corporation, organized under the laws of the State of California.

Q And as such, you pay the regular income taxes?

A On our income, we pay income taxes, yes, sir.

Q Getting back to the County Assessor, did you pay the full amount that was assessed in 1956?

A BY MR. OAKES: No, sir, a settlement was agreed upon between the County Counsel for the County of San Diego and myself, representing Operating Company. There was three years back taxes assessed in that first assessment, and there were a number of legal questions concerning whether the assessment as levied was correct, and a settlement was negotiated and the agreed figure was paid.

Q And what was the assessment? Do you recall?

A I don't understand your question.

Q What was the assessment and what was the amount settled upon.

A Well, this was four, five years ago, and I wouldn't want to guess, and I did not bring my files on the subject. I do have that information in my files, and I can bring it this afternoon if you want it.

Q Was the assessment \$82,797.67 and the settlement \$53,988.98?

A I am sorry; I could not trust my memory.

Q Did you pay the full amount in '57 that was assessed?

A To the best of my recollection, we did, sir.

Q In 1958?

A Yes, sir.

Q In 1959?

A Yes, sir.

Q In July of 1959, did you not ask that the assessment be cancelled?

A Yes, sir.

Q What was that assessment, do you remember?

A Possessory interest tax. We have maintained all along that since 1957, under Section 105.1 of the Internal Revenue Code, that this is an improper assessment, and the County Counsel has disagreed with us, and we have paid our taxes under protest, and this question is now being litigated in Los Angeles County, and just recently, the District Court of Appeals sustained the taxpayer on the same basis -- legal basis that we stand. This law was passed in 1957, as I recall, and it provided that possessory interests which were created before 1955, would be taxed on the law as it existed before 1955. In 1955, the law was in effect. By interpretation of the Supreme Court, the law for valuing possessory interest was changed in the so-called De Luz decision, in which decision the Supreme Court overruled the previous decisions of that Court and set a different formula for the taxes of possessory interests.

The Legislature, feeling that that was unfair --

apparently feeling that was unfair to possessory interests that had been entered into prior to the De Luz decision, passed this law to the effect that all possessory interests created prior to 1955 would be taxed on the old formula.

The County Assessors, throughout the state, I understand, have taken the position that that law is unconstitutional and have refused to follow it, and that is what we are protesting. The matter will have to be decided by the Supreme Court, and until it is, why, nobody can say for sure whether our position is sound or is not sound.

Q There was an Attorney General's opinion on this question of the assessment levied on Del Mar --

A Not to my knowledge. There was an opinion of the County Counsel of San Diego County.

Q Mr. Smith, the recently incorporated City of Del Mar proposed an admission tax, or head tax on the race track admissions; is that correct?

A BY MR. SMITH: That's right.

Q Did you protest that tax?

A No, we didn't protest the tax itself until they made a change from the original proposal, but when it first came up, we were willing to go along with a regular head tax, similar to what they have in the rest of the areas where you have racing, such as Inglewood, San Mateo and San Bruno, on a straight ten cent a head tax.

Then, the proposal came up to go on a different

formula, and we did protest that. I believe we worked it out, everything, very harmoniously with the City of Del Mar, and I think both parties are very content.

Q You protested the amount of tax that they proposed; is that correct?

A And the formula for which it was to be applied.

Q The tax they proposed was a ten cent a head tax?

A No, the first one we discussed was a ten cent a head tax, and then it became a ten percent tax, which was a very different story, and we worked it out very nicely with the City of Del Mar. I am sure they are very happy.

Q Mr. Smith, has the Operating Company been renting property to the Western Harness Association?

A The question of the -- the word "renting property" may be a matter of legal terminology. I would like Mr. Oakes to answer that.

A BY MR. OAKES: In my opinion, the arrangements between the Operating Company and Western Harness Association could not be legally considered a lease.

Q Mr. Smith --

SENATOR FISHER: I wonder if I may interrupt at that point?

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: I would like to refer you to your Sub-Franchise Agreement of July 26, 1954, which is Exhibit 8 in the brown supplemental book. I suppose every-

body's got copies of it, page 57.

A BY MR. OAKES: May I get my glasses?

Page 57?

Q Exhibit 8, referring to page 57, the last paragraph, or portion of a paragraph on that page, beginning to the effect as follows:

"It is understood that the Premises, or a portion thereof, are presently the subject of a certain letter agreement between Turf Club and Western Harness Racing Association dated December 1, 1953, as amended and supplemented by letter agreement between said parties also dated December 1, 1953, wherein Western Harness Racing Association was granted the option to use and occupy a portion of the Premises on the terms and for the periods set forth in such letters, and, Operating Company having been furnished true and correct copies thereof,"

-- and so forth, and by virtue of the rest of this Sub-Franchise Agreement of July 26, 1954, apparently Operating Company undertook to continue that arrangement in effect.

Mr. Oakes, you have seen those letters, no doubt; do they or do they not constitute an interest -- a leasehold interest in some of the property owned by the State of California?

A Well, I don't recall ever having seen those

letters. You must understand, Hugo, that my present relationship as legal counsel was created and commenced in the spring of 1955.

Q I see.

A And I don't recall ever having seen those letters.

Q Well, the reason I am interested in this question is -- I will address the same question to Mr. Smith -- and I will tell you that the reason I am interested in it is a statement you made before a Del Mar conference here last week to the effect that only since -- in the last three years, have you been entering into this agreement, and that it was at the behest of the 22nd Agricultural District.

I am wondering if the -- Well, first of all, was there such an arrangement between the Del Mar Turf Club, original Del Mar Turf Club, and the Western Harness Association?

A BY MR. SMITH: Senator Fisher, you must have misunderstood me there, because I have always said '53 is when we took it over, when they made the housekeeping arrangement of the \$35,000 payable for maintenance. At that time, the 22nd District, who had had the Western Fairs -- or Western Harness there since 1947, decided that it wasn't practical to try -- for them to try and maintain that side, and we are supposed to maintain it, and also they had a problem with their -- in case of mud in the wintertime, we have to

have heavy equipment; it's really quite a job to take care of it, and they asked us then, in writing, if we would take over the care and maintenance for the Western Harness, under the same agreement that they had had with them for some six or seven years.

Q Well, then, in fact, Del Mar Turf Club did, on December 1st, 1953, enter into some sort of an arrangement, covered by at least two letters, with the Western Harness Racing Association granting use and occupancy of a portion of the land, which was owned by the District?

A Correct, at the written request of the District.

Q And as I understand these documents, the Turf Club also had control of some property, which was not owned by the District, out on the periphery of it; is that not correct?

A That I am not sure of.

Q There are, apparently, in the same documents, a reference to land owned by the Ed Fletcher Company that --

A Oh, that's down in Sorrento Valley. That's on the periphery, yes.

Q And the ground designated in this paragraph B is District-owned property, not the separate property of Del Mar Turf Club, also had under some arrangement with Ed Fletcher Company?

A The property, as covered by the Western Harness Association, was definitely the stable area and racetrack

area of the fairgrounds, and it was very consistent with our maintenance and housekeeping arrangement that we had. We are entitled to make a separate deal, or -- with any lessee or tenant of the state for the racing grounds under their particular care.

Q Well, I understand the maintenance agreement came up and was negotiated in '54 as a part of this Franchise Agreement.

A No, sir, it's the extension of '53.

A BY MR. OAKES: No, it's the '53 extension, Hugo.

Q Do you have copies of those; did you make copies available of the letters described in paragraph B on page 57?

A BY MR. SMITH: I frankly don't know whether we have those on file now. I would have to look them up in the records. I wasn't prepared to bring them.

Q If you have, will you submit copies?

A Yes.

Q Do you recall whether or not the rental arrangement to Western Harness Association has been changed over the years since December 1st, 1953?

A You mean the terms?

Q Yes.

A Yes, there's been an increase in certain rates, like that.

Q And is that covered by correspondence?

A Yes.

Q Between the Operating Company and the Western Harness Association?

A And Western Harness, that's right.

Q I wonder if you would make copies of that also available, please.

A Yes.

Q BY MR. WATERS: Those letters, which Senator Fisher referred to, that are incorporated by reference in the agreement, are still in force and effect, are they not, Mr. Smith?

A No, absolutely not.

Q The successors to them are?

A Successors of what?

Q Of the letters which are referred to in the agreement.

A No, you had a three-year lease and a three-year renewal of that lease. That lease was terminated at the -- this last Spring. This was the third year of the second agreement that we had. We call them a lease; actually, it isn't. It's a maintenance agreement that we had with the Western Harness.

Q Well, they were in force and effect last December?

A That's right. Actually, as you remember, there was quite a to-do about that, and it was brought to our attention for the first time that the District did not

want us to carry this through any further, and they so told us they would allow this thing to go on, because they wanted Western Harness there; it was too late to make other arrangements and we would maintain it, but after the termination of this particular period of care, which was about the middle of March, that we would not renew any more agreements with anybody as far as maintenance on the back side.

Q Mr. Smith, under your arrangement with Western Harness Association, was there not an arrangement whereby they would pay you five dollars and a half per stall for a minimum of five hundred stalls?

A Correct.

Q Or guarantee of five hundred stalls?

A Yes.

Q And that, of course was for use of the stalls?

A BY MR. OAKES: No.

A BY MR. SMITH: That is not correct.

A BY MR. OAKES: That was for maintenance and extra work of hauling their manure and policing the area and hauling their trash away and all the other housekeeping arrangements that we had to make in order to keep them comfortable and happy in the stable area.

Q Did they not --

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: That's covered by the letters, letter agreement?

A BY MR. SMITH: That's an agreement we have had for years. It's a customary thing. You have to take care of these things, in the stable area, and we have been -- by agreement, we did certain things; we would furnish them with stable superintendant, stable clean-up. We have to contract outside for the hauling away of straw, manure every day. It has to be done every day.

A BY MR. OAKES: This was just a continuation of what the District did for them.

A BY MR. SMITH: We have been doing it for years.

A BY MR. OAKES: The District performed the same service for Western Harness from '47 to '53. At that time, by reason of the change in the maintenance agreements under the '53 extension under which we assumed the obligation of doing the housekeeping and maintaining that whole area throughout the year, the District, by letter, requested us to assume these housekeeping duties for Western Harness at the same rate, or at a rate computed the same as the District, namely, a rate based solely on our cost, without any profit, because Western Harness was considered by the community of Del Mar to be very beneficial. They came in there in the wintertime. They didn't race; it's purely a training operation in the wintertime, and they provided a source of revenue to the Del Mar area during the wintertime when otherwise their business is at its lowest ebb, and it was because of the desirability from the standpoint

of the economy of the community that every arrangement was made to induce Western Harness to come down here at -- at a charge that is much less than our actual cost was of taking care of them.

Q Mr. Oakes, I don't think anybody quibbles with the desirability of having Western Harness Racing Association winter on those premises. I call your attention to the fact, however, that these letters are described in the Sub-Franchise Agreement, under which you people now hold tenure, that they are described in words of a leasehold, rather than a maintenance agreement. It describes the letters as being those under which the Western Harness Racing Association was granted the option to use and occupy a portion of the premises under certain terms and conditions.

Now, those are words of lease, and I am wondering if that's what the letters say, or whether this is an incorrect description of what the letters say.

A I can't answer that, because I don't think I have ever seen the letters. I don't recall.

Q You would agree with me this is leasehold terminology in the Franchise Agreement?

A I will say this: That whoever drafted this Extension Agreement had no thoughts that the exact phraseology would be interpreted and used the way we are trying to interpret it and use it this morning.

Q Well, this is -- I am not referring to the

Extension Agreement. I am talking about the Sub-Franchise Agreement under which you hold, and I am wondering whether or not you consider one of the obligations a sub-lease under you, as described in Paragraph B.

A Well, if you are asking me whether in my opinion we have a right to sub-lease, my answer is: We do not.

Q Thank you.

Q BY MR. WATERS: Mr. Smith, you received additional moneys from Western Harness Association for track maintenance, did you not?

A BY MR. SMITH: That is correct.

Q Now, in connection with the California Thoroughbred Breeders Association, did you not grant a use of the property to them for their annual yearling sale?

A I think it was always done with the knowledge of the District. Actually, that property is on the grounds of the 22nd District. We believe it was in the jurisdiction -- under our control during the particular period of time that we are entitled to occupy it. It's -- We believe that a thoroughbred breeders sale of yearlings is very consistent with horse racing, and, therefore, follows that under the lease agreement, it is perfectly proper that any part of that -- those grounds that are available and proper for use, be used for such things as yearling sales. It's one of the finest sales in the United States, the second largest, and we are very proud it's been developed

the way it has.

Q But you did receive payment and you participated in revenues from that sale?

A We did not receive payment. We received no revenues from the sale.

Q You received no payments from the California Thoroughbred Breeders Association?

A Correct. We did not receive any payment from the California Thoroughbred Breeders Association.

Q You received no money from them?

A No, sir.

Q In other words, you allowed them to come in and use the premises for a sale for free?

A Certainly. We even put a cocktail party on and a dinner for them too.

They bring in -- they bring in people from all over the United States, horsemen from all over the country, and it's a great thing for the area. It would be kind of silly to drive them away.

Q You believe that is an activity normally connected with horseracing?

A Yes, sir. In fact, every racetrack in the country would love to have it if they could get it.

Q Do other racetracks have sales?

A Yes, they have a sale at Keeneland in Lexington, Kentucky, and then they have one at Saratoga.

Q Any other California race track have them?

A They have them at Pomona. They had this one at Hollywood Park before they moved down here. They have had them at Bay Meadows.

SENATOR MILLER: Mr. Chairman.

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: Why do they select this site for these yearling sales?

A BY MR. SMITH: Well, I understand you have asked Colonel Koester, who is head of the Thoroughbred Breeders Association. I wish he could answer that question. They are the ones who select the site, actually. He is coming down here tomorrow, and would be glad to testify, I am sure.

Q All right. Until he gets here, let me ask you a couple of other questions.

Do you, of your own knowledge, know why they left their previous location, which you just testified to be -- what was it, Santa Anita?

A No, Hollywood Park, I believe.

Q Why did they leave there?

A Frankly, I don't know. It happened before I was out there.

Q You indicated a few moments ago you thought it would be kind of silly to try to drive them away. Tell me what you did to bring them here?

A As I said, I was not out here at that time

when they came to Del Mar.

Q You gratuitously explained you had given them a dinner and cocktail party. What did they have to do with their locating here?

A Nothing at all, just part of the entertainment of people that come to this.

Q I understand. You don't know why they came?

A No, sir, except it seemed polite.

Q And it's an awfully nice place if you can get it.

A Senator, I would like to say something, that the sales -- the total volume of sales since they moved down here has doubled what it was before. That seems a good reason.

Q Do you collect sales tax on these sales?

A Yes, sir, the vendor does.

Q Does the vendor? What is it, through an association?

A Goes through California Breeders Association. The sales are conducted by Faesig and Tipton, who are horse auctioneers.

Q I see. And the local community doesn't benefit from those sales taxes; is that correct?

A BY MR. OAKES: The City of Del Mar gets their three percent and the State of California gets their one percent.

A BY MR. SMITH: It's the other way around.

A BY MR. OAKES: It's the other way around, but anyway, the City and State get what they should receive.

A BY MR. SMITH: Increased the budget all right.

THE CHAIRMAN: I can see the good Mayor perk up his ears.

SENATOR MILLER: I wonder if I could ask a couple more questions.

THE CHAIRMAN: Yes, indeed, Senator Miller.

Q BY SENATOR MILLER: Mr. Smith, earlier in your testimony, or part of your testimony, you mentioned that when you were talking about the one-eighth that the District receives now that one -- or twelve and a half percent, I believe you called it?

A BY MR. SMITH: Correct.

Q Twelve and a half percent? That is twelve and a half percent of the track's share; is that correct, sir?

A Correct.

Q And you made a comparison of that with the rental at Golden Gate Field wherein at Golden Gate Field, the one percent there is one percent of the total handle; is that the correct term?

A Correct.

Q That's before there are any deductions for the track's share or the State's share?

A Your gross mutual handle is one figure; that's your total that you find published every day, and then our formula is twelve and a half percent of our share of the

track's handle, which amounts to just a shade over one percent of the gross handle.

Q Then, this is just a measuring device to determine how much of your share of the total handle you pay in rent; is that correct, sir?

A Well, it's an automatic formula. It relates to handle or mutual handle income.

It's all set by law, Senator. I mean, each proportion. We can't change it. The only one that can is the State. They changed it last year.

Q You were making some comparisons?

A Yes.

Q And I wondered what the basis for them --

THE CHAIRMAN: May I interrupt, Senator Miller, with a question at this point?

Q Are you comparing the percentage of one percent as against twelve and a half percent, Mr. Smith?

A BY MR. SMITH: Yes. If you take the formula of one percent of the gross handle and apply it to the Del Mar formula, or the fairgrounds and our lease there, last year, we paid \$391,000; our total handle was a little over \$38,000,000, which would make it \$381,000, or \$10,000 less than if it were paid under the straight one percent formula. It amounts to just a little bit over one percent.

Q Do the same circumstances exist at Golden Gate as at Del Mar; does the Santa Fe furnish the entire plant,

the equipment and so forth?

A No, the Santa Fe only furnishes the buildings and the grounds, which is the same as we do.

Q Well, that was what I meant; the buildings and grounds are similarly furnished in both cases?

A Yes. Yes.

THE CHAIRMAN: Excuse me, Senator.

SENATOR MILLER: I wonder if I might proceed with that.

THE CHAIRMAN: I think the gentleman wished to elaborate on his answer.

THE WITNESS SMITH: There is one more thing about that is at Golden Gate, they have possession of the entire grounds for the entire year with the right to sublease, and they do sublease.

SENATOR MILLER: May I continue, Mr. Chairman?

THE CHAIRMAN: Yes. Pardon me for interrupting you, Senator.

Q BY SENATOR MILLER: Now, do I understand you to state that the Santa Fe -- Atchison, Topeka and Santa Fe Railroad, or their land company, one or the other, owns the structures and all the improvements as well as the land?

A BY MR. SMITH: Yes.

Q Did they in fact construct them?

A I don't know anything about that, sir. They own them. Whether they bought them, whether they built them, I don't know.

Q Did the present operators of Golden Gate Field succeed to an interest that was held by the prior operators; do you know that?

A No, I don't, sir.

Q I think you would have --

Mr. Chairman, I think you would have to know the answer to that before you could make a comparison; I believe, or at least, I strongly suspect that the Santa Fe Railroad Company did not put up a dime for the construction of any of those facilities at Golden Gate Field. This I do not know, but I suspect this, and I think that what happened there is that they provided a long lease to the original operators of Golden Gate Fields, and they went through some sort of a reorganization -- I guess perhaps it was even a little more than some sort of a reorganization; I think they nearly went broke once, or they did go broke --

A BY MR. SMITH: Yes.

Q Then, the new organization succeeded to the rights under those structures and their maintenance of them, as I understand it, that the original tenant had, so all that the Santa Fe has involved in this, as I understand it, is the value of their land, which makes it a considerably different operation than the one presently under discussion, because the one under discussion was constructed by whom?

A Well, by the W.P.A. grant and then by the -- by the W. P. A. grant in the beginning, and by advance of

money by Crosby and Associates.

SENATOR FISHER: Mr. Chairman.

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: That was out of the rental portion, out of the one percent?

A BY MR. SMITH: Correct.

Q Or one plus percent?

Q BY SENATOR MILLER: As a matter of fact, it was all constructed by public moneys; is that not true, sir?

A Well, not all of it. There have been -- most; we have had quite a few leasehold improvements, but there are quite a --

Q Substantially all, is that correct, sir?

A Yes.

SENATOR MILLER: So I think, Mr. Chairman, we should endeavor to get the material in respect to Golden Gate Field inasmuch as the comparison was made by the witness, and I believe made again in his report, and like so many comparisons, I am afraid this one is not very accurate.

THE WITNESS SMITH: Senator Miller, the --

Q BY SENATOR MILLER: Yes, sir?

A BY MR. SMITH: We have some of the parts of the lease here from Golden Gate.

Q I suggest only because you apparently didn't know of the differences.

A Actually, as far as the value of the property

is concerned and how they acquired their property, I don't know, but actually, I don't think that if you get the property cheap, you rent it cheaper, or is that the fundamental way of operating, or do you get a value based on the value--

Q I don't know the answer to that, and I suggest you apparently don't either. The problem there is: Did the new company succeed to what the other company in fact had, or did it all revert to Golden Gate Field or to the Santa Fe, and then, if that be the case, then what you say is certainly accurate, and -- but I don't know one way or the other is the case, and I expect it's the former.

A These documents we have describe the buildings and structures that are under the lease, and it's described as being property of the lessor.

THE CHAIRMAN: If I may interrupt, I understand --

SENATOR MILLER: I understand that. It's pretty obvious it's on the other fellow's land.

THE CHAIRMAN: Yes, improvements put on real property become real property.

SENATOR MILLER: But there is a big difference about who pays for it and who builds it. The law is rather firm in that respect.

SENATOR FISHER: Maybe I can ask --

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: Just to clear the thing up, Mr. Smith, if it turned out that the landowner in the

case of Del Mar, the landowner had financed the major portion -- not quite all of the construction -- out of the roughly one percent rent he receives, you would agree, would you not, that this was substantially different from a situation in which the landowner, out of his one percent, paid no part of the construction of the buildings, even though they became a part of the land which would revert to him at the end of a long-term lease. You would agree that that was a substantially different situation, would you not? Be about \$5,000,000 in the case of Del Mar.

A BY MR. SMITH: I am afraid you lost me about half way through the question, so I am not --

Now, this is a point that actually, there are technical points; you have two pieces -- you have two pieces of property similar. How they were acquired and how they got them, I don't know. The question is to determine the reasonable basis for race track rentals, and I think that you will find that even though you would want to find a difference in this particular case at Golden Gate, that they are following a formula or a basis for rental of race tracks that is very standard throughout the country.

Q Let me put it another way around, Mr. Smith: If the Del Mar Turf Club had been required to pay a twelve and a half percent portion of its part of the handle, roughly equalling one percent of the gross handle, and had, in addition, been required to finance out of its share of the

operation, with no reimbursement from the State or the District, all of the capital improvements attributable to racing, you would agree that that would be a substantially different lease than the one under which you do operate, wouldn't you?

A Oh, yes.

Q And the difference would have been the -- several millions of dollars, wouldn't it?

A I imagine so, yes.

Q That's quite a technicality, I think.

Thank you.

SENATOR MILLER: Mr. Chairman.

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: I wonder if we can get back to poor, old Golden Gate Field again.

You mentioned in report -- the blue report is sufficient identification -- that the off-season maintenance costs of Golden Gate in 1959 were \$46,824.00, whereas at Del Mar, they were \$222,775.00?

A Correct.

Q And you don't make any explanation of that that I have been able to see. You refer to Exhibit E, stating that you received \$35,000 from the -- let's see -- this isn't -- this isn't your report, is it?

A That's right.

Q This is your report?

A Uh-huh.

Q You are employed by the Operating Company-Del Mar Turf Club?

A Correct.

Q I see. All right. Then, what is the reason for this tremendous difference in maintenance costs; do you have any idea?

A Yes, one of the main problems we do have is the fact that we have to keep these grounds up and have them ready to turn back to the Fair for the Fair. We have all the responsibilities of plantings and everything else. In the case of Western Harness out there, when they are there, or any other use of those grounds, we have to maintain them and they are used a lot.

If you could take a place like that, that size, and after a race meet, button it up as you might say, scrape your track off, and let it go until the following spring, you would save a substantial amount in maintenance.

SENATOR FISHER: Golden Gate isn't buttoned up.

THE WITNESS SMITH: All but the infield.

SENATOR FISHER: They have a continuing use of the infield for a golf course, but they have people in there every day on those grounds.

THE WITNESS SMITH: But the golf course operator maintains the golf course and pays them ten percent rent

besides.

SENATOR FISHER: Is it possible that the -- that the tenant then, in the case of Golden Gate, pays for part of the off-season maintenance so it doesn't show up in Golden Gate's?

A It possibly could be, but that would make it one of the reasons there is a substantial difference between our's and their's, you see.

Q We are trying to discover the difference between forty-eight thousand and two hundred thousand, wherein it lies.

A Yes.

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: Referring to the Golden Gate matter, the comparison, does the Santa Fe Railroad spend any money in maintenance of the Golden Gate track?

A Not that I know of, no.

Q No? Does it invest any money in improvements, added improvements in the plant?

A I don't know.

Q You don't know?

A That I don't know.

Q Or they don't?

A As far as I know, there has been no major improvement by them.

Q Or any improvements as far as you know; is that

not correct?

A That's right.

Q So there again would be a difference insofar as the comparison you would have to make?

A Well, no. We make improvements too each year. We put in quite a bit of those same --

Q You make improvements. I am talking about the District makes improvements also, do they not, --

A Yes, but they use all the facilities too.

Q Out of your rent?

A But they use all of those facilities too, which is quite a difference.

Q But you use them; but you use them?

A Surely we use them. We both use them.

Q Mr. Smith has the -- Has the Operating Company at any time during your tenure as President and General Manager leased or rented or allowed any private owners to stable their horse on the track, during periods under which you are not in possession under the terms of the lease? .

A I would certainly not classify them in the category of leases. There have been occasions when horses are -- have been stabled in the track, or stable area, sometimes at the request of the -- of the District itself. Sometimes a community thing that comes up that we get together on. The charge has been for care and maintenance

only, sometimes six dollars a month for a horse; sometimes a high of ten dollars a month. We frankly never welcomed this, because it means opening up the stable area and giving us certain problems, but there have been cases where in one case the Eleventh Naval District called and asked about a -- a spot for a couple of horses for one of their captains; he had been shipping out here and he forgot he had two horses and he had no place to put them, if we could take care of them.

I got the call from the Eleventh Naval District; I said, "Sure, we can take care of them," so we did a couple of months, but that's \$714 for four years, so it wasn't a very big item.

Q You received payments from private owners for the use of that property?

A Not for the use, sir. I am not saying that; for the maintenance and care, which we are entitled to, under our lease agreement.

Q And they dealt with you?

A Sometimes.

Q Why did you grant them permission to be on the property?

A Well, because we had the care and maintenance of the -- of the stable area, and for some strange reason in the horse business, and I think you fellows, if you have been around horses at all, there is a feeling you take care

of each other. We have had people in there we never charged for. They are coming down, going to Caliente, something breaks down, they can't get across the line; they can't leave their horses in the trailers two or three days, so it's natural to put them in.

Q Why would you not refer them to the people who had the rightful control of the parties?

A Sometimes you couldn't get hold of them.

Q Well, but then what -- what did you do with the money that you received?

A The money I -- You mean the money the company received? It was put in the receipts.

Q Of the Operating Company?

A Of the Operating Company, that's right.

Q In all cases?

A As far as I know, except the -- when we were told, oh, in the first part of the year, the first -- last part of last year, we were notified you didn't want us to anymore. Up to that time, nobody objected; it had been going on year after year.

Q You did, in fact, turn over some money to the District recently, did you not?

A Correct, fifty dollars, I believe, or sixty.

Q Fifty dollars for what period of occupancy?

A I don't know the details of that. It was supposed to be five horses for one month, or one horse for

five months, I am not sure which.

Q Well, you received the money, you let the man in.

A I didn't personally, sir, and I heard about it. I don't take care of that detail particularly.

Q Who does?

A Mr. Burns, I believe, or his assistant would take the money in in the Controller's Office.

Q I would like to ask where under the lease of 1953, which we are referring to now, you get the privilege of using more than nine hundred stalls?

A I don't think there is any limit in the number of stalls. It's the -- all the buildings and -- that are on the grounds, as I understand it; that's the way I read the lease. You better ask Mr. Oakes about that. He may read it differently.

Q In the 1936 agreement, from which all of these other agreements are extended, or they are extensions thereof, it specifically mentions nine hundred stalls, Mr. Oakes.

A BY MR. OAKES: Well, if you will refer to paragraph 2 of Exhibit 7, which is the 1953 Extension --

Q What page?

A That's on page 53. It says: "That the premises covered by the said Franchise Agreement shall consist of the racing and appurtenant facilities as outlined in the plat marked 'Exhibit One', attached hereto and made a part of this agreement; together with any racing and

appurtenant facilities hereafter constructed within the boundaries of the said San Diego County Fairgrounds."

Now, Exhibit One is not here, but Exhibit One is the entire Fairgrounds, exclusive of the year-around office buildings of the 22nd District. That, in my opinion, gives us the right to the exclusive possession for our approximately eighty days of the year.

Q Of everything, excepting the Administration Building of the 22nd District?

A That's what's on Exhibit One, yes.

Q Did the District acquire some property after that agreement?

A I don't know.

Q Mr. Smith, do you know?

A BY MR. SMITH: I believe so. I think they acquired that property -- or the slough area south of the existing alternate road, the County road.

Q Is that area used for parking?

A Not by us.

SENATOR FISHER: Mr. Chairman.

THE CHAIRMAN: Senator Fisher.

SENATOR FISHER: Mr. Chairman, I know it's awfully close to quitting time, but our reporters have been struggling along for two hours.

THE CHAIRMAN: Would you like to have a few minutes

rest?

THE REPORTER: No, that's all right.

Q BY MR. WATERS: Mr. Smith, do you have anything in writing from the 22nd District in your records, authorizing you to make any agreements with the Western Harness Association?

A I am sure we do in the files. I don't have them with me. I will try to get all this stuff together sometime during the hearing (BY MR. SMITH)

Q I would ask that you be requested to search your files and produce any, if you have them, and submit them to the committee.

A All right.

Q Do you have anything in writing from the District authorizing you to conduct the annual yearling sales?

A No, sir.

Q Do you have anything in writing from the District authorizing you to grant permission to private owners --

A No, sir.

Q Do you -- are there any other uses, other than those which you have been questioned about, which you, the Operating Company, permits on the grounds?

A Not that I can think of.

Q Who permits the Del Mar Caterers to use the grounds?

A Well, I presume that they have a deal with the

Track, don't they; I mean, with the District.

Q They have no agreement with you?

A No, they have an agreement with us, and they have -- only during our race meet and the proper days during the race meet, and thereafter to clean up; the same as we have with the District.

MR. OAKES: Mr. Chairman, may I clear that up? I think that was a little bit confusing there.

THE CHAIRMAN: Yes, Mr. Oakes.

THE WITNESS OAKES: During the eighty days of our possession, we have the right, as provided here on page 54, paragraph 7, "That Turf Club shall have the exclusive right to conduct horse racing meets and all activities generally or commonly connected therewith on said premises," -- Now, such things as this yearling auction and our caterers who furnish the food and beverages are matters that we consider "generally and commonly connected" with horse racing meets, and during our eighty day period, the caterers are our concessionaire for the food and beverages; and the yearling sale, as Mr. Smith pointed out, is a part of a horse racing meet. There isn't a horse racing meet in the country that wouldn't encourage a yearling sale on their premises, if they could get it, because it attracts horse people, it attracts bettors, it increases your pari-mutual handle. This is all part of our business.

SENATOR MILLER: Mr. Chairman.

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: You then, in fact, have a contract with the caterer; is that correct?

A BY MR. OAKES: To supply the food and beverage during our racing meet, our forty-two day racing meet, yes, sir.

Q And does he pay you rent?

A He pays us a percentage of his sales.

Q And is there one caterer that has both food and beverage?

A Yes, sir.

Q And what is the percentage that he pays you?

A BY MR. SMITH: Twenty-five percent of the gross sales.

Q Twenty-five percent of the gross sales?

A Excluding the cafeteria sales on the backstretch; that is not on a commission basis.

Q How does that work?

A It's on strict cost. There's no commission taken out of any sales in the stable area.

A BY MR. OAKES: He pays us nothing on that. He charges these people on the backstretch his cost.

Q I see. He pays you twenty-five percent of everything he takes in, other than this one limited operation?

A BY MR. SMITH: Correct.

Q Now, how much was that for the last calendar

year, or last year, whatever you use?

A It amounted -- that's in the report; it amounted to about \$187,000, I believe.

Q About \$187,000?

A Right.

Q Now, has that been substantially the same over the years?

A No, it's --

Q Over the last five years?

A It's gone up a little bit. It went down one year. On the whole, it's been within twenty thousand. This is the same, exactly, as they are paid at all race tracks in California to other caterers.

Q Now, what do you, in fact, provide him, other than the right to do business?

A Well, of course, he has a captive -- he has a captive audience, you might say.

Q He sure has.

A He has got customers. On all -- he doesn't have to advertise. We do all the advertising and promotion; the people are there for the track. Do clean-up for them. We do all the clean-up and furnish utilities.

Q What do you estimate your cost to be to conduct your share of the food and beverage operation?

A Well, I couldn't give you that figure now. I would have to look it up.

Q Do you have a direct cost figure on that?

A I don't even know if we keep a direct cost figure on that.

Q I see.

SENATOR MILLER: No further questions.

Q BY MR. WATERS: As a matter of fact, Mr. Smith, you don't have any costs, do you?

SENATOR MILLER: Has the cost of -- The gentleman testified he has the cost of clean-up.

THE WITNESS SMITH: Have the cost of utilities, clean-up; we do all the cleaning up, all the advertising. I think we do quite a bit to give him the business.

Q BY SENATOR MILLER: Do you advertise his food and beverages?

A No, but we advertise to get the people there, and there's no other place to take care of it.

Q That captive audience takes care of that. Mr. Smith, the fact is the caterers do operate on the grounds outside of the eighty days to which Mr. Oakes referred?

A That I presume they have. I think they have offices over there and a warehouse.

Q You know they do, as a matter of fact?

A Yes, that's right.

Q You know they operate a cafeteria during the Harness Association, do you not?

A That's right, not in agreement with us.

Q They have no agreement with you?

A That's right; with Western Harness.

Q The reason I am pursuing that -- you said some of these private owners and the Western Harness Association made agreements with you outside the eighty days. I am wondering if you had any agreement with Del Mar Caterers, because, after all, you are responsible, you stated, for the maintenance, and these people are occupying the property during the period in which you say you are responsible for maintenance.

A That's right. We have no agreement with them, outside of our regular eighty day period of occupancy.

THE CHAIRMAN: The committee will be adjourned until 2 o'clock, or recessed. Those under subpoena will please take note that they will be required to attend.

(Whereupon a recess was taken until 2:00 o'clock p.m., after which the following proceedings were had:)

THE CHAIRMAN: The committee will reconvene. We will call Mr. William D. Moore, please.

WILLIAM D. MOORE,
called as a witness, was examined and testified as follows:

THE WITNESS MR. MOORE: Mr. Chairman, Honorable Members of the Committee and Staff: My name is William

D. Moore. I am an attorney at law with the firm of O'Melveny & Myers, 433 South Spring Street, Los Angeles, California.

Approximately five weeks ago, we were retained by the Del Mar Turf Club, the Operating Company. I am speaking for the purpose of giving our opinion with respect to the validity of the 1936 Franchise Agreement and all subsequent agreements between the Turf Club and the 22nd District.

From that time, until last Friday, we carefully analyzed each and every agreement. We did a painstaking job in legal research, and I believe a thorough and complete job, both on the facts and on the law.

In addition, we reviewed every Attorney General's Opinion bearing on the matter that we could find, and with particular reference to, I believe, a 1943 opinion, concerning the interruption of racing during the war. We were also furnished a copy of the legal opinion, which this committee has since published as its supplemental report.

Based on, as I said before, what I believe was a thorough and complete job, it was our opinion that there is simply no question about it, but that the 1936 agreement, the 1945 extension, the 1953 extension and the 1954 assignment and sub-lease are legal, valid, binding and enforceable in all respects.

For the purpose of this hearing, I would like to ask Mr. Oakes to distribute to the members of the

committee a copy of our opinion and would ask that the opinion be received and be made a part of the record in this hearing.

THE CHAIRMAN: Thank you, Mr. Moore. Your opinion will be received by the committee for the record.

THE WITNESS MR. MOORE: The Operating Company also asked our opinion concerning the present powers -- present leasing powers of the District with respect to the race track.

I think there is no doubt about it, but that under Section 87 of the Agricultural Code, a new lease of the race track for the purpose of running races would be prohibited.

In addition, there is a section in the Business & Professions Code, Section 19480.1, which provides that except for the present arrangement between Operating Company and Boys Incorporated, a license to conduct horse racing cannot be granted if the racing is to be conducted by a charity, or under an agreement for the benefit of the charity; therefore, it is also our opinion:

1. The District has no power to enter into a new lease, and

2. That even if that power were given by way of amendment, that the present arrangement could not lawfully be entered into.

Q BY SENATOR FISHER: What was the number of that section?

A Section 19480.1, Business & Professions Code.

Q When was that enacted?

A I believe that was a '55 amendment to the Code.

Q Immediately after this arrangement was made?

A That may be true. It did, however, except existing arrangements after a certain date, which protect this present arrangement.

Q Do you know what the genesis of that amendment was?

A I have no idea, Senator. I do not know. I might add this, gentlemen:

In giving opinions of this type, and in reviewing agreements of this nature, we find more often than not that substantial questions are raised that we simply cannot, as lawyers, answer one way or the other.

If, in giving an opinion, we entertain any reasonable doubt, we so express in our opinion; our opinion is qualified. We have to use what people call "weasel words".

In this matter, there was no occasion for that. We state unqualifiedly and absolutely that we think that the agreement was entirely valid. In short, we do not believe that any reasonable argument can be made against the validity of the agreements from 1936 to date.

Any questions by the committee?

SENATOR FISHER: Yes, I have, Mr. Moore.

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: Mr. Moore, I am trying to find here for a moment the portion of the original Franchise Agreement, which required that the Del Mar Turf Club proceed duly subsequently to obtain for itself a license from the California Horse Racing Board, and then further, the provision that in the event of failure to obtain that license, that the lease, or franchise, would be terminated. Do you know those provisions of the original --

A Are you speaking of the provision that says in the event racing shall not be conducted, it shall become null and void, and of no force and effect, or something along that line?

THE CHAIRMAN: For a period of two years.

Q BY SENATOR FISHER: For a period of two years, or something to that effect.

A I don't believe it says a period. I think it just says if they fail to conduct racing, it shall become null and void.

Q I call your attention to Section 9 of the original Franchise Agreement, which appears on page 19 of the Supplement to the Examination of the 22d District:

"9. It is understood and agreed that it is impossible to ascertain the damage, if any, sustained by the party of the first part for the failure of the party of the second part to carry out the provisions

of this franchise, or to carry on race meetings upon the premises of the party of the first part, and in the event the said party of the second part fails for two (2) years to carry out the provisions of this franchise, or to carry on said race meetings on the said premises, then and in that event this agreement shall become null and void, this franchise shall terminate," and so forth.

Is it your view that that is still a subsisting and violable part of the entire franchise arrangement between the District and the Operating Company and the Boys Incorporated?

A Do I still believe that that is a part of their arrangement?

Q Yes.

A I believe it would be, yes. I think it's been carried, either expressly, or by inference, to the franchise agreement of '53. I am not expressing a firm opinion, but I believe that would be the case.

Q Now, calling your attention to the franchise agreement extension of August 17, 1953, as it appears on page 53 of that document and subsequent pages --

A Yes.

Q Page 55, Section 8, provides as follows:

"That Turf Club agrees to use reasonable diligence to obtain licenses for racing dates in each

year of the term of this agreement but in the event no license is obtained or for any reason no racing is conducted in any one year, through no fault or neglect of Turf Club, then the term of this agreement shall be extended to include one whole additional year for each year in which no racing is conducted by Turf Club."

Do you think that should be read in light of the other language in the original agreement that I mentioned to you?

A May I refer you to Section 12 of the same agreement to answer your question. It would have to be read in the light of it; however, there would be an apparent conflict, and Section 12 says:

"Should any of the provisions of this Franchise Agreement Extension be in conflict with provisions of said Franchise Agreement dated the 8th day of December, 1936, or its amendments, supplements or extension, then such provisions hereof shall obtain and apply and be in lieu thereof to the extent to which they may conflict."

Q If you felt that the Turf Club didn't make reasonable efforts to obtain licenses for racing days, then I assume that your opinion is that that would supercede the prior arrangement and automatically, the franchise would be extended for an additional year for any

year in which they did not make reasonable effort?

A I would construe this provision as being made for the benefit of the Turf Club. If they could not, for some reason, in good faith, secure a license, they, at their option could require an additional year's extension of this lease for each year they could not operate racing. Whether they will or not, I don't know.

Q But you feel if they did not use reasonable diligence, then the other provision might prevail?

A No, I -- I think you have to say as far as any terminating aspect of the provision, that section 8 of the 1953 agreement would cancel out anything in conflict therewith, and not merely extend it, so that in the event that Section 8 is not applicable, then you cannot go back into the original agreement to breathe life into the superceding.

Q Well, if it's not applicable, it's not in conflict. You don't mean to say just because it's in the same sentence, that you strike out the sentence and don't apply it in that set of circumstances; is that right?

A I thought you said if they do not use due diligence and do not get a license.

Q What do you think happens?

A Nothing.

Q Nothing?

A I believe it would be a breach. Nothing under this agreement -- I believe the Turf Club -- the District could probably require that the agreement be terminated, because this agreement implies, at least, that the Turf Club will conduct racing, and if, through its own fault, it does not conduct racing, then, I think that the District could terminate the agreement and perhaps even sue for damages.

Q You don't feel that the original language is there for any purpose at all to be considered at this point of time?

A At this time, I do not. I think that that language has been superceded by this. I think if you look at the history this was intended, because the Attorney General gave his opinion in '43 --

Q Well, now, Mr. Moore, I don't want to get into too much of a quibble, but it says to the extent to which they may conflict, and you are suggesting that the entire provision is out. We have discussed a situation in which they would conflict, and then I am asking about a situation in which they would not conflict.

A Well, I believe I have answered that to the way -- to your thinking, but not under the provision of the -- of the earlier lease. I construe that, under the provisions of all these agreements together, that if, through its own fault, the Turf Club does not conduct

racing, then I think the District would have good grounds for termination, quite apart from any particular provision in any of the agreements.

Q Now, if the Turf Club had at any time, prior to the -- a franchise extension, if at any time prior to that they had failed to use reasonable diligence or had failed to obtain a license, do you think the original provision would have prevailed?

A The original provision would have been applicable at any time up to its implied amendment or conflict by the later agreement.

Q That would not have required anybody to do anything?

A It would, sir, under the law. There are at least twenty cases in California and perhaps several throughout the country that have construed this type of provision, and without conflict. This is not an automatic termination provision. The failure to conduct racing did not and does not terminate that lease. That is in there for the benefit of the lessor; it is at his election.

If he elects to terminate, then he may rely on the provision. However, if he continues to accept rents, then, he has waived his right and you will find that on page 7 of our opinion well documented; no conflict in the cases whatever.

Q All right. Now, let me ask you about Section 7 of the Extension Agreement that the Turf Club shall have --

A The 1953 Extension, sir?

Q I am sorry. This is on page 54, at the bottom of it. It provides that the --

"7. That Turf Club shall have the exclusive right to conduct horse racing meets and all activities generally or commonly connected therewith on said premises, including harness and quarterhorse meets (except that District, during its annual Fair, may conduct racing as part of its Fair program)," and goes on to the provisions for rental.

A Yes, sir.

Q Is it your -- would it be your opinion that the following section, Section 8, which we have already discussed, would require the Turf Club to have used due diligence to obtain not only the horse racing meets for the type of horse racing they had conducted theretofore, but also for harness and quarterhorse meets?

A I don't believe so. I think if you look at the history, Senator, this contemplates thoroughbred racing.

Q Well, it also contemplates rent based on the amount of racing, doesn't it?

A It contemplates rent based on the amount of racing, quite definitely.

Q All right. Now, if --

A I believe the provision including harness and quarterhorse meets is again in there for the benefit of lessee. If he chooses to conduct quarterhorse and harness race meets and gets a license, he may exercise his franchise under this agreement. I don't believe he is required to. I don't believe the failure to apply for a license would affect this agreement whatever. I do think, however, the failure to apply for a license for thoroughbred racing would give rise to serious question.

Q Since the question of racing meets has been defined to include harness and quarterhorse racing in Section 7, by what construction do you exclude that from the same term in Section No. 8?

A By the paramount law; the parties have construed it as not requiring harness and quarterhorse racing, as witnessed by the fact that there has been no objection for twenty-three years. The best indication of the intent of the parties is what the --

Q This is seven years.

A Very well, seven years.

Q Not quite seven years, as I read it.

A I stand corrected, seven years. These parties have not even considered that it requires harness or quarterhorse racing. I do not believe that then we can.

Q In the event the District wanted to conduct

quarterhorse or harness racing meets, they would be precluded by this amendment, even though the Turf Club did not seek any dates?

A The District? No, I think the exception that you read answers that to the contrary, providing that "Except that the District, during its annual Fair, may conduct racing as a part of its Fair program."

Q It would be precluded from renting the premises outside the eighty days to anybody else for harness or quarterhorse racing?

A I believe that is correct. This is an exclusive franchise.

Q They would be precluded except insofar as it is in conjunction with the --

A They are precluded by --

Q I am talking about the agreement. I am asking about your --

A My interpretation of the agreement is that either the District may operate racing, as a part of its Fair, or the Turf Club may operate racing on that track, and no other parties would have the right to do so, either by this agreement, or under Section 87 of the Agricultural Code.

Q I now refer you to Section No. 2 of the Extension lease agreement, as it appears about half-way

down on page 53. Would you give me your opinion, as an expert, as to the amount of maintenance required to be done by the Turf Club under the terms of Section 2?

A The amount of maintenance?

Q Yes. To put it in layman's language for us so we can understand it.

A Well, as I understand the agreement, the Turf Club is required to do all that's necessary to keep that place in good repair, good working order, throughout the year.

Q All year round?

A I believe, except during -- at the Fair itself.

Q Except for the active Fair itself?

A I believe that's the case.

Q May --

A May I take a moment to read it to refresh my recollection?

Q Yes. That's what I asked you to do.

A Yes. I would say that the last portion on page 53, "That the Turf Club shall charge District or any lessee of the District actual maintenance costs occasioned by use of the premises at any time other than District's operation of County Fair" -- under the -- under this agreement, I -- I interpret this as requiring the Turf Club to maintain the grounds throughout the year.

Q Except while the Fair is in possession?

A Except while the Fair is in possession, yes.

Q And except for clean-up after the Fair?

And except for clean-up after the Fair; is that correct?

A I believe that's in there.

Q Now, it provides, however, that the Turf Club shall not be called upon to repair or replace deteriorated or worn items of equipment, except of its own making?

A Right.

Q And excepting normal wear and tear and deterioration. Would that include, to your way of thinking, painting or not?

A I don't believe painting would come within normal maintenance. I think painting might well be a repair.

Q Well, now, Mr. Moore, if you rented a building for fifteen or twenty years, and you were required to maintain that building, you mean to tell me you wouldn't have to paint it once in awhile?

MR. OAKES: May I call the witness' attention to the fact that there is an express provision in here, "except as to painting;" if he will read that, he can answer your question more completely.

SENATOR MILLER: Where is it?

SENATOR FISHER: Twelfth line from the bottom.

THE WITNESS: (MR. MOORE) To answer your question, if I were going to be lessee, I would spell out whether or not I was going to paint it.

Under an agreement, however, for repairs, I think it could well be argued that painting was not included within the term of "repair".

MR. OAKES: Here it expressly says that we are to do the painting, so I don't think there is any question about it.

SENATOR FISHER: That they are required to do the painting?

MR. OAKES: Yes, sir.

Q BY SENATOR FISHER: Now, Mr. Moore, in light of that, and in light of the District, or the -- your client's understanding that they are to do all maintenance for \$35,000 a year, including, as I understand it, the painting, what do you interpret that last three lines to mean, which provides "The Turf Club shall charge District, or any lessee of District actual maintenance costs occasioned by the use of said premises at any other time than the District's operation of the County Fair"?

A I interpret that to mean the Turf Club would have the right to charge the District for the costs occasioned by the District use, or by others than the Turf Club.

Q In that event, Mr. Moore, what are they paying

\$35,000 for? As I see it, everything's been excepted after you get through that sentence.

A What are they paying for?

Q They are paying \$35,000, as I see it, for -- this shall be paid by the District, the sum of \$35,000, annually; I am trying to find out, after you finish reading the sentence, what they are paying for?

A Well, assuming that the Turf Club has actually charged the District for maintenance, they would be paying for maintenance occasioned by their own use.

Q We are looking at the document. We are talking about -- actually, you have to find consideration --

A You asked me what they are paying for. I don't know what they are, in fact, paying for. I said under the document, they would have the right to charge the District for maintenance work occasioned by the District's use. Whether or not they do, I don't know.

Q Well, what other maintenance is there?

A Well, there's maintenance occasioned by the racing.

Q Well, that's already excepted, I think. They have got their -- under the Franchise agreement, they have to maintain it during their period of time. They have got the use and occupancy. You mean to tell me this \$35,000 is to maintain the track during the occupancy, the eighty day occupancy of the Turf Club?

A That's the only thing left the way you stated it to me.

Q I am asking you to interpret the document for me.

A My interpretation is: The Turf Club will maintain the premises and will collect \$35,000 a year.

Q For maintaining it?

A For maintaining the premises. It has the right to charge the District the actual cost occasioned by the use of the District or the District's contracting parties.

Q And they can make all the changes permitted under this Section 2 then; they can charge for all actual maintenance for the entire year for all of the premises, except that the District would then pay to the Turf Club \$35,000 to maintain the premises during the eighty days there was exclusive use by the Turf Club; is that what you mean?

A It would be during the eighty days, or any longer time which is required to maintain because of racing.

Q And under -- then, you think the District would be required to pay \$35,000 just for that?

A Per year, yes, sir.

Q That's what I wanted to know.

SENATOR FISHER: Thank you.

THE CHAIRMAN: Anything further?

MR. OAKES: This is not our position at all, Senator

Fisher. We maintain it on a year-around basis, and that's what this agreement says, and that's what the \$35,000 is for.

SENATOR FISHER: I will be frank to say I am entirely confused as to what it says, but he is giving an interpretation, and I am interested in his position.

THE WITNESS MR. MOORE: I may state I am not interpreting this provision. What they do, I don't know. I suspect it is at variance with this language.

MR. OAKES: The express language says "will maintain that portion as outlined on Exhibit One on a yearly basis."

That means three hundred sixty-five days a year. Then, it goes on and excepts that portion of the time when the Fair is in actual operation and the clean-up after the Fair; otherwise, there is no exception.

SENATOR FISHER: You don't feel then, Mr. Oakes, that the last three lines are an exception that swallows up the first --

MR. OAKES: No, the last three lines pertain to interim use of the Fair that increases the ordinary maintenance. There is a certain amount of maintenance whether you are using a building or not; it has to be painted, the floors may need to be fixed, the roof has to be patched, and so on, whether it is used or not.

Now, if in addition, there is interim use such as the Harlem Globe Trotters Basketball in Bing Crosby Hall, that Hall has to be cleaned up, because of

the use of that Hall by the patrons that come to see the basketball game.

SENATOR FISHER: Except that Bing Crosby Hall isn't in the lines defined in yellow, is it?

MR. OAKES: All right. I picked an unfortunate example.

SENATOR MILLER: Mr. Chairman, I wonder if you would tell us where, or if, anyone here knows where we find this area outlined in yellow, the premises outlined in yellow on Exhibit One; is there an Exhibit One in this report?

Where do we find the yellow business?

MR. OAKES: That's the -- That's the area north of the main avenue, what we call Avenue of Flags.

SENATOR MILLER: Now, that includes area other than those buildings that you use for your office during racing season?

MR. OAKES: Oh, yes, sir, it includes much more than that, yes, sir.

THE WITNESS MR. MOORE: May I further answer Senator Fisher's questions about what the District does for the \$35,000 a year? I think the grass grows the year around. I think the streets get dirty, the buildings get dirty, the windows have to be cleaned. These happen even though nobody uses it.

Now, the exception would be if there is an actual use like the Globe Trotters, such as the Dog Show,

the Cat Show, the actual cost in cleaning up after that would be an exception. If the Turf Club wanted to charge the District, it could, but as far as year-around maintenance, there is maintenance, there is cost involved; as I understand it, there is some \$200,000.

MR. OAKES: Western Harness would be a very important illustration of what we are talking about. When Western Harness is there, there is a good deal more clean-up and maintenance to be done than when they aren't there, and under this provision, we feel we have the right to charge Western Harness the actual cost to us of the increased maintenance occasioned by their use and occupancy of the stables.

SENATOR MILLER: Do you in fact do that?

MR. OAKES: Yes, sir.

SENATOR MILLER: Do you do that with the Harlem Globe Trotters also?

MR. OAKES: Well, as Senator Fisher said, I made a mistake on that. They are south of the Avenue of Flags and don't come within our maintenance.

SENATOR MILLER: That is not your responsibility?

MR. OAKES: No, sir, I made a mistake.

SENATOR FISHER: I am maybe a little unkind to you, Mr. Moore. I was exercising the cross-examiner's prerogative since you gave such an absolute answer, which I haven't been able to examine in any detail. I just wanted

to find out how closely you understood the documents you were purporting to interpret.

THE WITNESS MR. MOORE: I may say this Senator, the matters that you have mentioned, I don't believe would have any bearing at all upon the validity or enforceability of this lease. That is the primary question involved in our opinion, whether or not the District had the powers in 1936, whether or not there was a valid extension in '45 and '54.

The matters that you suggest are matters going to the internal terms of the agreement. Now, if these are not complied with, or if these are questionable, I don't see how it could affect its validity.

Q BY SENATOR FISHER: Well, now, Mr. Moore, it would make a substantial difference as a legal matter whether or not the original provision for termination, automatic termination, had been eliminated by, and superceded by, language, or merely was inoperative when, in a given set of circumstances, it was in conflict?

A BY MR. MOORE: It makes a big difference at present whether it's still --

Q And that was one of the questions I asked you about.

A May I apologize? Your questions pertaining to maintenance and interpretation of the terms other than that would not affect the validity.

Q Yes.

A And the question again whether or not a

particular term calling for a termination, automatic or otherwise, is still in force, still does not affect the validity, and I -- I don't think that you can state that the District, even if it may have had the right at some time to terminate this agreement, I don't think that they have ever done so. I don't believe there has been any termination by operation of law, and as I pointed out -- As I pointed out on page 7 of our opinion, there was no automatic termination. These terms read as if it shall immediately become null and void and of no force and effect, but the courts do not construe that language, and never have. It also makes a difference if -- the reasoning is very sound; if the Turf Club should feel it had a bum deal, they could merely fail to run racing and be out of the lease immediately, and you couldn't sue under the lease. It's a two-edged sword.

Q If the State feels it has a bum deal, it's stuck?

A No, sir, if the State feels it has a bum deal, it has the right under that provision to terminate; it did not exercise that right -- there was no racing during the war. I believe under that, the State may have had a way out -- a way to terminate at that time. It chose not to. It chose to grant additional years of racing; because of that interruption and the further extensions of ten years each, they had no intention to terminate. They did not

choose to terminate, but unless they do and did --

Q You are pointing out that the Turf Club today has the right to terminate by not applying for the license and enforcing the termination?

A I say this, if you were going to take the position that it is an automatic termination, that's what you would permit. That's the reason the courts will not so infer. If that is so, all I do is terminate and get out of the balance of the term; you can't sue me under it, because you have no more lease. I will agree with you on that.

Q It's a wise policy. It is also a substantial question as to whether or not the provision is no longer there, or whether it is there only where it is not in conflict with later provisions?

A At the present time, I believe it is important from an academic standpoint. It becomes important from a practical standpoint if and when the Turf Club fails to conduct racing.

SENATOR MILLER: Mr. Chairman.

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: Mr. Moore, did I understand you to say in answer to the next to last question of Senator Fisher, that if the District believed that they had a bad deal, or a poor arrangement, they could terminate, but

they didn't choose to do so. How can they terminate if they have a poor arrangement?

A I was speaking about the interruption in racing during the war. The provision says that if for any reason racing is not conducted, it shall become null and void. Racing was not conducted during the war. At that time, the District could possibly have chosen to terminate the lease because of non-racing.

Q I see.

A But until there has been a substantial breach of one of the material provisions in the lease, neither party would have the right to terminate. I am not saying one party can get out, but not the other party. This is a mutual arrangement. I am merely saying with reference to the courts' interpretation of the automatic null and void arrangement, if you allow it as an automatic termination, you give either party the right to wilfully breach and cause a termination, which is certainly not within the intent of the parties. This is binding equally on both parties.

Q BY SENATOR FISHER: It then leaves the lessor with the option whether or not he wants the lease to continue or not; the option is in his hands and not the lessee's hands?

A Quite true.

Q That's all you are telling us?

A It's for the benefit of the lessor, and as we know, the Attorney General says it would be harsh, unreasonable or unjust, and they did not think the Court would even allow it because of the war. That may be right and may be wrong; I don't know.

THE CHAIRMAN: Any further questions?

SENATOR MILLER: I have none.

THE CHAIRMAN: No further questions? Thank you, Mr. Moore.

Mr. John Quimby.

JOHN QUIMBY,

called as a witness, having been first duly sworn, was examined and testified as follows:

THE WITNESS MR. QUIMBY: Mr. Chairman, Members of the committee --

THE CHAIRMAN: Pardon me, will you state your name and who you represent, please?

THE WITNESS MR. QUIMBY: My name is John Quimby, I am Secretary-Treasurer and Executive Officer for the San Diego County Labor Council, AFL-CIO.

On behalf of our Council and members involved, we feel it is necessary that we present to you our feelings relative to the work of your committee and the Del Mar Turf Club.

The report that we have is an examination of the management of the 22d Agricultural District, however, we find that a large portion of the report deals with the Del Mar Turf Club. The report and other indications reaching our Council indicates that there may be a question of the legality of the lease of the Del Mar Operating Company. Because of the question involved, we wish to call to the attention of this honorable body the fact that we have thirteen unions involved with the Del Mar Turf Club with a total employment on peak days of nearly twelve hundred workers. We are deeply concerned that in no way must this employment be jeopardized.

The Committee must be aware that at present, San Diego is a critical area in unemployment and any threat to the future employment situation is a threat to the entire economy of our community.

The payroll for our people for the entire forty-two day meet is about one million four hundred thousand dollars, plus additional year-round jobs also to be considered.

Each year, people depend upon this employment as part of their total year's income, which includes students and school teachers, who work under the jurisdiction of our various unions.

We have always enjoyed collective bargaining agreements with the Del Mar Turf Club. A very good climate of industrial relations exists. The management of the Del

Mar Turf Club have always been hard bargainers with us, but when agreements have been reached, cooperation has put them into mutual effect. Wages are comparable with other race tracks in the State of California.

We emphasize as strongly as possible our desire that this Committee look at all the facts involved and certainly urge that nothing take place that would disturb the peaceful industrial climate that exists.

The jobs and payroll are important, especially at this critical time.

I thank the committee for an opportunity to present our views.

We felt that we should make this statement. We were mentioned in the first report that this committee made. There is some mention of organized labor in there, so we felt that we should make some statement to your group.

SENATOR MILLER: Mr. Chairman.

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: Is there anything in the reports that indicate that this committee is concerned about whether or not there are peaceful industrial, or labor relations between the Fair Board and the various trade unions in the area?

A BY MR. QUIMBY: There is one phrase.

Q Is there? What was that, Mr. Quimby?

A Senator, it is on page 24, report of the

Committee on Governmental Administration.

Q Which report?

A The white report, page 24.

Q Whereabouts, sir?

A It is the first paragraph, page 24: The labor costs to the district are made exceptionally high because of two factors. One is the necessity to remove all fair temporary structures in a relative short time resulting in much overtime and the second is the fact that the Del Mar Turf Club insists that the fair abide by the provisions for labor contained in union contracts negotiated by the turf club in order to avoid labor union trouble for the track."

Well, this is the -- this situation is not true, and we have upon occasions gone before the Board of Directors of the 22nd Agricultural District concerning problems we have with them, and then, we have, of course, separate negotiations with the Del Mar Turf Club.

Q Do you have any better hours or conditions or wages with the Del Mar Turd Club than you have with any other employers in the area?

A No, they are comparable. The wages and hours of -- of the tracks are primarily similar, and in most cases where union -- where the building trade contractors are involved, or building trade unions are involved, they are usually the associated general contractors rate, so

the -- the wages are comparable.

Q Do you have a maintenance rate?

A I believe that is covered under a contract to the Turf Club, a maintenance rate where there are several unions involved, including the laborer's union, I believe some of the teamster's unions, and I believe building services.

Q Are there year-round -- they have some year-round employees, do they?

A Yes.

Q And are those people on maintenance scale, or new construction scale?

A They would be under maintenance scale.

Q Which is usually lower; is that correct, than new construction?

A Most of the people are employed, of course, during the racing season.

Q I am unable to determine what this paragraph means either, Mr. Quimby, but I don't think it's the purpose or intention of this committee to knock anybody out of a job, unless the State is paying for it and they are not working, why, they should be knocked out.

You have no objection, Mr. Quimby, do you, if this committee examines these contracts with the idea of finding out whether or not the public agency is getting their money's worth?

A No, sir. We have no -- our people work for the track, and they do a fair day's work for a fair wage scale, and this is what we are concerned with.

Q You understand what we are concerned with is whether the public agency is getting their money's worth for what they provide, or whether they are subsidizing a private industry?

A Right.

SENATOR MILLER: That's the only questions I have.

THE CHAIRMAN: Any other questions?

MR. WATERS: Yes.

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: Mr. Quimby are you connected in any way with the Boys of -- what is it, Boys Incorporated of America?

A No, sir.

Q You are not a director of that?

A No, sir.

Q Referring to page 24 of the section that you referred to a moment ago, may I ask you if this is not correct: "The labor costs to the district are made exceptionally high because of two factors. One is the necessity to remove all fair temporary structures in a relative short time resulting in much overtime" --

A Well, this is a possibility. I don't know how close the racing dates are from the time that the Fair

terminates, but the -- this type of an overtime provision is a typical provision in any labor contract, so if it's -- if they have to move in at a certain period of time and overtime is required; this is nothing unusual.

Q Well, but it may be I misunderstood you. I thought you were objecting to that statement.

A No, I am objecting to --

Q I thought you said that was not accurate.

A No, I am objecting to the statement -- the last sentence.

Q You read the whole thing, did you not?

A Yes, but I was asked to read it.

Q I want to get one thing out of the way. Now, you are not objecting to that much of it?

A No.

Q "--and the second is the fact that the Del Mar Turf Club insists that the fair abide by the provisions for labor contained in union contracts negotiated by the turf club --"; now, do you know whether that's the situation or not?

A I don't know. I don't know whether there is any connection -- "to avoid labor union trouble for the track" -- I don't -- certainly, we don't demand such a thing and this is why we object to that statement.

Q You would have no knowledge of whether the Turf Club insisted to the Board members of the District that they

abide by their contracts or not, would you?

A No, but I am sure that if -- The point is here it indicates that maybe labor was putting pressure on the Turf Club to obtain some favorable consideration with the District and this isn't true.

Q I don't read it that way, Mr. Quimby. I am sorry you do, because it's simply -- simply -- I can understand where in that situation the Turf Club would be anxious to avoid any labor troubles. If they felt that if the District was not paying the scale, the same scale that they were, that it might cause them some labor troubles, don't you see that possibility?

A Well, I see that possibility.

Q That doesn't mean that labor unions have anything to do with it.

A Well --

Q I would like to point out one further thing. Do you know about the situation where the Turf Club was hiring carpenters for maintenance work for the District and then charging the district back for that labor?

A Yes, I was aware of it; yes.

Q Do you know the reason for that?

A Well, as I understood it, the District wasn't able to pay certain fringe benefits that were -- that these men were used to getting, and, therefore, they asked the cooperation of the Turf Club to be able to do this.

Q Well, in that situation, the Turf Club hired the carpenters, and then were reimbursed by the District?

A That's right; as far as I know, that's true.

Q And your statement now is that they did that because the District wasn't able to pay the carpenters the scale and benefits that the union asked for?

A I don't think it was the scale, sir. I think it was the -- what were formerly called fringe benefits, and that a State Agency wasn't able to pay these, and since, I understand that they have been able to pay them.

Q Well, as a matter of fact, the State hires carpenters other places, do they not?

A Well, I believe they come under Civil Service.

Q Well, then, the point I am making of that is the fact that the Turf Club -- I was not present at the arrangements, but the record shows that the Turf Club was hiring carpenters, rather than the District for the District and the District was being charged for them.

A That's -- I wasn't present at the arrangements either, but I understand through our council that this was true, and it was a mutually advantageous arrangement, because the District needed these types of skills that these carpenters had, and apparently couldn't be obtained through Civil Service.

Q But in other situations, the State does have carpenters and they do not -- does not have a Turf Club

or some private party to hire them and do the negotiations for them, but they still have them.

A Yes, but I assume that they are under Civil Service, which these men haven't been under, you see.

Q Well, they could have been, perhaps.

A Well, they weren't, and so you had a difficult position. As far as the men were concerned, sometimes they weren't under Civil Service and yet they weren't getting full benefits otherwise, so this was a mutually effective agreement, as I understand it.

MR. WATERS: Thanks.

THE CHAIRMAN: Any further questions?

Mr. Allen Sutherland.

ALLEN J. SUTHERLAND,

called as a witness, having been first duly sworn, was examined and testified as follows:

THE CHAIRMAN: Have a seat, and we will declare a five-minute recess for the Reporters.

(Whereupon a short recess was taken, after which the following proceedings were had:)

THE CHAIRMAN: All right, Mr. Sutherland, if you will, state your name and who you represent, please.

THE WITNESS MR. SUTHERLAND: My name is A. J. Sutherland, Senior Vice-President, Security First National Bank,

Vice-President of the San Diego Chamber of Commerce, Treasurer of Goodwill Industries of San Diego County, Vice-President of United Fund, and member of Board of other charity and public institutions; 1957 President of Fiesta del Pacifico, and former member of the State Board of Education, appointed at the same time as Congressman Clyde Doyle of Long Beach by Governor Olson; also past National President, National Association of Credit Management, the largest association of credit men in the United States.

I wish to speak on what the Chairman referred to as may be the economic effects of holding a hearing at this time prior to the racing season.

First, I will not belabor you with figures shown on page 25 of the factual report, which I understand you have had a chance to review, except to call your attention to the \$6,800,000 figure. This figure represents only the first benefits. Tracing the second turnover of these dollars, statistical surveys show that thirty-five percent will go into payrolls, thirty-six percent for purchase of food and beverage supplies, ten percent for other operating supplies, nine percent for taxes and ten percent for rent, interest and profits. In other words, what helps one will help others. The people benefited in that expenditure totaling \$6,800,000 are first to benefit, but they in turn will

re-spend part of what they get, which benefits our whole economy, so since everyone in San Diego County benefits, everyone has a stake in the new dollars spent here.

I simply mention the above because tourism is San Diego's third largest industry.

It is my opinion your Honorable Committee should do nothing at this time to increase unemployment. Unemployment in the county increased from 17,800 in February, 1960, to 18,800 in March, against 12,000 jobless in March last year.

The March, 1960, unemployment rate was six percent of the total civilian labor force. Six percent is considered by government as critical. Unemployment insurance benefits averaged approximately 14,300 a week during the month of March, 1960, an increase of eighty-five percent over the same month last year.

To the man unemployed, he is not six percent unemployed, but one hundred percent, and this is a serious problem, which each one of us should do all in our power to eliminate. John Quimby, Secretary of San Diego County Labor Council, and I think alike in that we have a serious unemployment problem and we should do nothing that will increase that problem.

I call your attention that at the Business Outlook Conference, February 16, which was attended by the Honorable Governor Brown, our Governor had Dr. Theodore

A. Anderson, Commissioner of the Economic Development Agency, State of California, on the panel. I was not only on this panel with Dr. Anderson, but I spoke at the San Diego Open Forum in March on the same program with Dr. Anderson. I know Governor Brown and Dr. Anderson know our unemployment problem and have programs in mind to help this area. The Honorable Senator Fisher is aiding this program in initiating some of the speed-up of spending of State funds.

On April 12, the Honorable Newell Brown, Assistant Secretary for Employment and Manpower, United States Department of Labor, held a meeting, and on May 5, I attended a meeting held by Irving H. Perluss, Director, State Department of Employment. At both these meetings, our problems were recognized and discussed.

Del Mar racing has been built up around the dates mentioned and many people have returned year after year to vacation in San Diego at that time. I am part owner of hotel property in La Jolla and can state that it is during that period that we fill up. It has been my privilege to visit with Otis McClintock, Arthur Kincaid and other bankers, mainly from the southern states, J. Edgar Hoover, the head of our FBI and many other prominent visitors, who return year after year. Some of these visitors such as Bill Warren, Chairman of the Board of Transwestern Pipelines Company, have established homes in our area.

In conclusion, it is my opinion that if we do not

have the Del Mar racing season, it would have a severe effect on San Diego's economy at this time. Instead of aiding our unemployment problem, it would aggravate it further at a time when so many of our government agencies are trying to do something about it.

Thank you.

THE CHAIRMAN: Any questions by the committee?

Thank you very much, Mr. Sutherland.

Mr. Tom Douglas.

TOM DOUGLAS,

called as a witness, having been first duly sworn, was examined and testified as follows:

THE CHAIRMAN: Have a seat, Mr. Douglas, and state your name and who you represent for the record, please?

THE WITNESS: My name is Tom Douglas. I am Mayor of Del Mar. I am right in the middle of this thing. I would like to give you a statement on the effect of the economy to the City of Del Mar and the North Coast Communities of Solana Beach, Cardiff, Encinitas, Leucadia and Rancho Santa Fe, if racing is discontinued at Del Mar would be as follows:

I have a little bit of laryngitis. I hope you don't mind. Can you hear me all right?

Direct income from the race meeting to the

city government of Del Mar amounts to \$63,859.50, based on 1959 attendance and sales. This figure is derived as follows: \$20,659.50 on sales tax; \$4,200 city license fees; and \$39,000 admission tax; totaling \$63,859.50 from the track and caterers. This is 57.3 percent of the total budget of the City of Del Mar. It would require a property tax of seventy-five cents a hundred on our eight and a half million valuation to make up this direct loss.

Now, these figures are positive and direct to city government. The figures on loss to merchants, restaurants, gas stations, hotels, motels and home renters in the various communities have, of necessity, been estimated. The concensus of opinion gathered in talking to Chamber of Commerce leaders, merchants and real estate men in the various communities is that the racing season, combined with summer tourists increase business from twenty percent to fifty percent for these two months. Some hotel and motel owners state that they make as much in these two months as they make in the other ten months.

Rancho Santa Fe, Carlsbad, Oceanside and La Jolla merchants definitely state that racing is of benefit to them, but I have been unable to obtain any figures that can be validated, so these communities have been left out of my calculations.

The retail sales for Del Mar, Solana Beach and Encinitas were over eighty-one million in 1959. These

figures are from the State Board of Equalization. This breaks down to \$6,480,000 per month for ten months, plus a raise of twenty-five percent per month for two months of racing to \$8,100,000 a month, or a total of \$3,240,000 that is over and above normal business.

How much of this \$3,240,000 can be directly attributed to racing is impossible to say, but again, the consensus is that racing is the major attraction.

Merchants throughout the area were definite in stating that the summer season is when they make their profit. The balance of the year they plug along and make wages, depending on the summer splurge of spending to lift their businesses from mediocre or average to advantageous.

All of the merchants in the district that I have spoken to, and I have talked to at least fifty, have expressed concern to me that racing will not be discontinued, that it will continue in the district.

They say that it is valuable to them. From the home owners -- of course, they are not in business, but a great many of them went there for the reason racing is there and they love it; they have built in the last five to ten years, because it is close to racing; they don't profit, but they enjoy it, and the feeling is very unanimous in the district the loss of racing would hurt a great deal, and if this law could be changed so that racing would

continue, they would appreciate it very much.

THE CHAIRMAN: Any questions by the Committee?

SENATOR MILLER: Mr. Chairman.

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: Mayor Douglas, you are the third witness in a row that has explained to this committee the value of racing to a community, to a particular community or particular economic segment of your community, and I find no place in the report where this committee has suggested that racing should be curtailed, and after three people get up and tell us how valuable racing is to the community, what is it that leads you to believe, or is there anything that leads you to believe that this committee is set upon -- set out to abolish or curtail or eliminate racing in the community?

A I gather the lease is in question. If the lease is in question, racing is in question.

Q Well, how do you --

A If there is no lease, they are not going to race.

Q If there is no lease, they are not going to race?

A I don't imagine.

Q I further suggest that if there isn't a lease, they are not going to race either, but that's one of the things we are concerned about, I think. I hope this committee hasn't given the impression, or if it has, I

am in error, that we are attempting to eliminate racing from this area. I don't think that is any of our business as a matter of fact.

A Well, that is the opinion of a great number of people.

Q Do you think -- are you of the opinion that if the lease were either weakened or strengthened in respect to the public agency involved, that racing would be discontinued?

A Not necessarily, no, if it was strengthened or weakened, either way, while the lease was in effect, but I am afraid if the lease is dropped, then we will lose that revenue if the lease is broken.

Q Are you really of the opinion that the lease is in jeopardy, or that the continuance of racing is in jeopardy?

A Yes, that's what the community feels.

Q Where do they get that idea, I wonder?

A I don't know, but it's very strong.

Q Any stories in the newspaper that say that?

A Nope, I haven't seen any in a newspaper, no.

Q But the community feels that?

A They feel there's a chance of losing racing.

Q Losing racing by reason of the investigation of this committee?

A Yes.

SENATOR MILLER: I see. That's the only question I have, Mr. Chairman.

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: Mayor Douglas, in addition to the moneys spent in the community in connection with racing, which you have said is an important part of your economy in Del Mar, you also look upon Del Mar as an important source of revenues to the City of Del Mar taxwise?

A Definitely, yes.

Q May I ask you if you have a property tax in the City of Del Mar?

A We do not.

Q You do not have a property tax?

A No, not a city property tax. There is a county property tax.

Q The city itself levies no assessment on property?

A No property tax.

Q Now, do you also consider the Fair as important in contributing to the economy of the community?

A Not as much, no. Very few people move in, rent houses or anything like that for the Fair. It is of too short a duration. It is two weeks, and I don't believe too many people rent for that period of time.

Q You don't feel then that the Fair contributes --

A Oh, it contributes, yes.

Q -- anything to the economy?

A Oh, sure, it contributes to the economy, but not in proportion.

Q I didn't ask in proportion. It does contribute?

A Oh, yes, I couldn't tell you how much, because I haven't made a study of that even.

Q Has the Del Mar City administration contemplated any tax on the Fair?

A A business license, yes.

Q Does it contemplate an admission tax, or any tax of that type on the Fair?

A Not at the present time.

Q Did anyone in the City administration propose such a tax?

A We thought it over and decided against it.

MR. WATERS: No further questions.

THE CHAIRMAN: Thank you very much, Mr. Douglas.

Mr. Ewart Goodwin.

EWART GOODWIN,

called as a witness, having been first duly sworn, was examined and testified as follows:

THE CHAIRMAN: Be seated, announce your name and who you represent, please, Mr. Goodwin.

THE WITNESS: I am Ewart Goodwin, I am the President of the Percy H. Goodwin Company, and have been for some

years. We are active in the general real estate and insurance business in this area. I was retained as an appraiser of the fair rental value of the property of the 22nd Agricultural Association that is leased for a portion of the year to the Del Mar Turf Club, or its Operating Company. As an appraiser, I have worked for practically all the government bodies, some twelve divisions of the Federal government and various divisions of the State of California, such as Beaches and Parks, Division of Finance and Division of Highways.

I was asked to form an opinion as to whether or not the rent paid by the Del Mar Turf Club to the 22nd District Agricultural Association was a fair and reasonable rent and what in my opinion would be a fair and reasonable rent.

My interpretation of a fair and reasonable rent would be the highest rent in terms of money that would be paid for given facilities by a well informed lessee renting from a well informed lessor, each being aware of all of the advantages and disadvantages of the transaction, each having a full knowledge of all the uses and purposes to which it is adapted and for which it is capable of being used, neither being under any compulsion to make a deal and with a reasonable period of time to conclude the transaction.

It seems to me there are several basic tests as

to fair and reasonable rental in a transaction such as the subject one that are generally accepted:

One would be as to the rent in comparable existing facilities.

Another would be a capitalization of the income to indicate whether or not the landlord is receiving a fair rent on the value of the property rented.

And still another would be to appraise reproduction cost, less depreciation of the land and buildings and apply a fair and going net figure to this amount.

In the subject situation, we have an indicated rent that has been paid over a period of the last few years, and we have a determinable value of the real property involved.

It is my opinion that the fair value of the land and buildings rented by and of use to the Del Mar Turf Club is in the amount of \$4,000,000.

I reach this conclusion in appraising the property as though the land were unimproved by buildings, but in its present condition with utilities in. I then reached a conclusion as to the extent to which the buildings, fences and other improvements enhanced the value of the land.

It was to -- just for a little clarification, to elaborate a little further -- it was my opinion that the fair value of the buildings -- that the land was enhanced by buildings thereon in a depreciated value of two

million nine hundred and seventy-five thousand dollars. It is my opinion that the one hundred eighty-four acres of land had a value of \$1,000,000. That would have equalled \$3,975,000; I rounded it out at \$4,000,000, and concluded that that was the fair value of land and buildings leased by the Del Mar Turf Club.

This does not include the value of the Harvest Hall, Bing Crosby Building and the Office Building occupied by the 22nd District, which have values in the approximate amount of \$1,200,000. These buildings are not, in my opinion, concerned --

SENATOR FISHER: I am sorry, Mr. Goodwin, what was that last figure?

THE WITNESS: \$1,200,000. These buildings would not, in my opinion, be considered to have value by a well-informed lessor and lessee negotiating the sub-lease. It is true that one of the buildings is occupied for parking, but only because it is an area where cars are parked. The operation would be more efficient, I believe, if the building was not there as far as the Turf Club is concerned.

It appears to me that a well-informed landlord, owning a facility such as that under consideration, would expect a return of eight percent net on his investment after depreciation, or in addition to depreciation, however you express it. I would conclude that in view of the excellent maintenance of the property, the buildings

would have a remaining life of fifty years, and that, therefore, two percent a year depreciation is reasonable. I would point out that in arriving at present-day value of improvements, I used a figure of only one percent a year depreciation, and in the size of the figures used, there is some relationship between them. Two percent a year would therefore seem to me to be fair in approaching the problem, and that would be in the amount of \$60,000; therefore, it would seem a fair rental for the subject property on a year-around annual basis would be \$308,000; however, the subject property is only used basically twenty-two percent of the year by the Del Mar Turf Club. It might be concluded as one test that a lessor would figure that twenty-five percent was fair.

I think in this type of property we do have a problem of not continually using the fairgrounds, and that, therefore, there is a problem of vacancy and the question in negotiation would be: What period of vacancy can the landlord get the tenant to assume.

In a sense, the tenant has assumed some of the vacancy in the twenty-two percent, in that they do not race on Sundays and that there's fifteen days before and fifteen days after coming and going. It seemed to me that an additional fifty percent -- in other words, if they have the property twenty-two percent of the year, and they had another fifty percent added to that of the share of the

vacancy that they would pick up in the rent they pay, that that would be a reasonable approach.

It was, therefore, my conclusion, based upon the fact that the rent might be paid on the basis of a third of the year, that a fair rental on the basis of the valuation of the property, would be \$126,666 each year for the period of time the Del Mar Turf Club operated the premises.

The actual rent for the past five years totalled \$1,856,898.08, or an average annual rent of \$373,379.

It should perhaps be commented in conclusion that the reason for applying only depreciation and interest on the investment to the income to the 22nd District, is that from what investigation I was able to make, that in addition to paying taxes and insurance, the maintenance contributed by the tenant was considerably greater than the normal share of maintenance that would be assumed by a tenant as a result of arm's length lease negotiations.

Further, since the fair return on the value of the plant for the period during the year it is used by the Del Mar Turf Club is in the sum of \$126,666, the average rent actually paid approximates three times the rent a landlord might normally expect to receive for a portion of the year on a plant having the value of the property we are here considering.

Stating the matter another way, if we consider

that the Turf Club should pay thirty-three and a third percent a year, instead of the time the facilities are actually used, the 22nd District is receiving approximately a twenty-four percent return on the value of the plant.

Stating the facts a third way, the Turf Club is paying in total rent an amount that contributes \$60,000 a year depreciation, and in addition, they are paying more than their share of the maintenance, plus approximately an eight percent return on the land and buildings they are using that are owned by the 22nd District. This would be a fair return on the land and improvements they use if they had full control of the facilities on a year-around basis.

THE CHAIRMAN: Do you wish to leave a copy of that statement?

THE WITNESS: Yes.

SENATOR MILLER: Mr. Chairman.

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: Mr. Goodwin, were you invited by the committee, or were you subpoenaed by this committee to appear today?

A No, I was retained by the Del Mar Turf Club.

Q You were retained by the Del Mar Turf Club to make this appraisal; is that right?

A Yes.

Q And submit it to this committee?

A Yes, sir.

SENATOR MILLER: That's all I have, Mr. Chairman.

THE CHAIRMAN: Thank you very much, Mr. Goodwin.

SENATOR FISHER: I have one further question.

THE CHAIRMAN: Pardon me, Senator Fisher.

Q BY SENATOR FISHER: Mr. Goodwin, how many race tracks have you been asked to make appraisals on?

A I have not appraised any other race track.

SENATOR FISHER: Thank you.

THE CHAIRMAN: Thank you again, Mr. Goodwin.

Now, we will ask Mr. Donald Smith and Mr. Oakes to return to the stand.

DONALD B. SMITH AND ROBERT A. OAKES,
recalled as witnesses, were examined and testified further
as follows:

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: Mr. Smith --

THE CHAIRMAN: Mr. Oakes, did you wish to say something?

THE WITNESS MR. OAKES: Yes, if I may please.

Senator Miller asked a question of Mr. Douglas as to why people in the community were concerned, and Mr. Douglas stated that the supplemental report -- or Mr. Douglas could have stated that the supplemental report of this committee challenges the validity of this lease,

and Mr. Moore testified that by reason of Section 87 of the Agricultural Code, and by reason of Section 19480.1 of the Business & Professions Code, a new lease such as this could not be made by this District, the point being that if the present lease is terminated, there could not be any racing unless a new lease could be made, and under the two sections that I have just stated, a new lease cannot be made, and that's the reason that the people are concerned in relation to this matter.

SENATOR FISHER: Mr. Chairman.

THE CHAIRMAN: Senator Fisher.

Q BY MR. FISHER: Mr. Oakes, it would be a matter of law as to whether or not the lease had any validity according to that decision of special counsel, isn't that correct?

A That's a matter of law, not -- well, whether the lease is valid or not is, of course, a matter of law, and we have the opinion of Mr. Sheets that questions the validity and then we have the opinion of O'Melveny & Myers that supports one hundred percent the validity.

They are just lawyer's opinions, and -- so we don't know until we have a Supreme Court decision, I suppose, what the answer is, but you -- Mr. Miller's question was why are these people concerned, and I am trying to explain to him that there is a deep-seated concern because of the factual and legal situation that

I have just outlined.

Q You would also agree, would you not, Mr. Oakes, that if Mr. Sheets were correct, there was no lease, as the lawyer says, ab initio, in the beginning -- that is his basic contention, isn't it?

A Well, Mr. Sheets is here, and I would rather have him state his contentions.

Q Well, you have read it.

A I have read it, yes, sir.

Q And that seems to be the burden of it. You do feel that it would be important for the State, which has a financial stake, both as a taxing agency as a State as a whole, and as a landlord, represented by the 22nd Agricultural District -- it would be important for the legislature to know if there was a substantial question of invalidity so that that might be cured. That you can conceive of being a proper subject of inquiry of the legislature?

A I would much rather let the legislature determine what was proper. As far as I'm concerned, this is a legal question, and I think the Attorney General's Office is the place where legal questions are supposed to be determined on behalf of the State of California.

Q But in the event that it should be determined by the courts that it was an invalid lease, you would have no objection to the legislature having looked into the

matter and be prepared to make recommendations to cure that situation so that racing might continue. Do you feel that that would be an appropriate function of the legislature?

A Well, I think it's an appropriate function of the legislature to look after the interests of the people that they are elected by, yes, sir.

Q All right, and you also feel it would be an appropriate function of the legislature to examine into the question of whether or not the -- its agency was renting property had -- was renting it at a fair rental value, would you not?

A I certainly think that that's a subject of inquiry by the legislature.

Q And as stated by the Chairman at the beginning of this inquiry, that these were the only two questions which were before the committee at the present time -- you understood that?

A I really don't get the purport of your question. Would you --

Q Well, you understand that these two questions were the only ones being properly before the committee at the moment?

A Yes, but when this committee published a report in which it is stated that the lease is invalid, then that is a concern of the people of this community, because it affects their economy.

Q Well, it's also the concern of the legislature so that curative measures may be taken, if it finds that it should be -- that that should be the case, that's one of the questions before us.

A Well, we may part company there. As I said, Senator Fisher, I feel this -- that legal questions involving the State are primarily within the province of the Attorney General's Office.

Q I don't think there is any question about that but if we see a storm coming up on the horizon, you wouldn't want us to ignore it until after it was on us, would you?

A I didn't see any storm on the horizon until this committee made this report.

SENATOR MILLER: Well, Mr. Chairman, if the gentleman please, maybe that's one of the reasons that the committee made its report was because no one here locally saw a storm on the horizon. The question is whether there was a storm or whether there wasn't, not whether anybody saw it; isn't it, sir?

THE WITNESS MR. OAKES: We can discuss the difference between whether there was a storm, or whether a storm was seen. Let's say this: In the opinion of nobody here was a storm seen, and as far as I know, in the opinion of nobody here was there a storm in existence.

Q BY SENATOR FISHER: Well, if I told you, Mr.

Oakes --

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: -- that some members of the Board of Directors and some persons in the executive department of the government in the Department of Finance had questions about the validity of the lease, which questions came to the attention of the committee, you would not want us to ignore that now, would you, in light of its importance to our community?

A Gentlemen, you are much better able to determine what your duties and functions are than I am, and I am certainly not going to express an opinion as to what they are, but if the Department of Finance, after twenty-three years --

Q I will tell you --

A -- has all of a sudden decided that it's been making mistakes, I don't see any reason to jeopardize our legal rights or the economy of this community. If they have made mistakes, then just make sure that they don't repeat them.

Q Well, that would be a fair subject of inquiry, wouldn't it?

SENATOR DONNELLY: Mr. Chairman.

THE CHAIRMAN: Senator Donnelly.

Q BY SENATOR DONNELLY: I would like to call the witness' attention to the fact that this is not a

report of the committee, but I think, rather, it's a report to the committee by the staff of the committee as far as our investigation is concerned.

A That isn't the heading of it, Senator Donnelly.

Q Well, it says "A report of the committee"; that's true, but it was a report made by the staff to the committee.

A Well, that is one of the things that has been troubling us here, Senator Donnelly. We understood that all of these two reports were reports by your investigating staff --

Q That's right.

A And yet, they are published as being reports of your committee, which is -- which, in my opinion, creates a misleading impression, because it starts right out here and says, "A Report of the Senate Fact-Finding Committee on Governmental Administration." Now, if this is not a report by your committee, then, it shouldn't say that it is.

Q Well, it is a report to our committee by the staff of our committee, who have investigated for the committee, and that's the reason we are here, to find out what the facts are.

A I think that we would have felt a good deal more sympathetic towards this whole situation if these documents had been published as a report of your investigating staff. Instead, they were published as a report

of your committee, which concerned us, because we have not had an opportunity to present our side of the case, and when the report comes out as a report of your committee, we are disturbed, because we feel that we have been deprived of an opportunity of a fair hearing, such as we are getting now, and we are grateful to have it too, sir.

SENATOR MILLER: Mr. Chairman.

THE CHAIRMAN: Senator Miller.

SENATOR MILLER: I think the committee is prepared to take full responsibility for anything that bears its name. The fact remains we are here to determine whether allegations or claims made in the staff report to the committee, which bears the committee's name, are in fact valid, or whether they are not, and as far as this legal question is concerned, it's quite obvious that there are different opinions on it, and what this committee is really concerned about is which opinion is correct.

We are here attempting to gather as many of the facts as we can, not suppositions or speculation, but to find out what the facts are in order that whatever adjustments are necessary to be made, in the event that there is not a valid contract, that they can be made, not with any idea of disrupting your community, or changing the racing session here.

That is not a charge of this committee, as I see it, so while we have been hurling some gratuities back and forth, I think we have been wasting a lot of

each other's time.

THE WITNESS MR. OAKES: If I may, Mr. Chairman, I would like to go back to a couple of the things that were raised this morning that we did not have the answers to this morning, which we have attempted to get the answers in the short period of time that we have had, and if you --

THE CHAIRMAN: Go right ahead, Mr. Oakes.

THE WITNESS MR. OAKES: With your permission, let us revert back to the Western Harness situation.

Western Harness first came down to winter at San Diego at the Del Mar Fairgrounds in the winter of 1947. Now, there is no racing there; there is no admission; there is no revenue; there is no income to anybody.

This was a facility that the District at that time decided to make available to the Western Harness people as a place to -- to keep and train and exercise their horses during the winter between racing meets.

The District, whatever its reasons might have been in having Western Harness come down here, it proved to be a desirable and profitable thing to the merchants of the northern part of the San Diego County, and it was continued yearly thereafter by the District, the Turf Club having nothing to do with it -- continued yearly after by the District from 1947 until -- through the winter of 1952-53, and on November 5, 1953, the 22nd District, through its Secretary-Manager, Paul T. Mannen

at the time wrote a letter to the Del Mar Turf Club, which I will read:

"Inasmuch as your organization will be handling the maintenance of the grounds starting January 1, 1954, it appears that it would be wiser that you also handle negotiations with Western Harness Racing Association for the stabling and training of horses here during the winter season.

"The Western Harness Racing Association is anxious to start stabling horses here about December 1st of this year, and have a three-year contract for the period December through March.

"Any reasonable agreement that you may make with them to stable horses at the Fairground will meet with our approval. We do not expect you to lose money, or to make a profit on this project, and suggest a contract with them similar to that under which we have operated in the past.

"The Western Harness Racing Association paid all maintenance expenses incurred in the stable area and on the track during the period of occupancy. You have our approval to start the program December 1 of this year and continue for three winter seasons."

Now, this is what was done, and that took us through 1956-57 winter, and we continued on the -- on a basis substantially the same as the District had heretofore operated. I believe there was a slight increase in

the charges we made to cover the increase in labor costs that came about during these years, and then in '56, we extended this same arrangement again with the -- a slight increase in cost -- in charges to cover our costs through the 1959-60 winter.

Now, that period is over, and the District advised us last fall that they did not want us to continue further with these arrangements, and so, of course, we have done nothing to renew the Western Harness agreement, and will do nothing further in view of the fact that the District has told us that they would prefer now to take back this housekeeping chore for the Western Harness Association.

SENATOR DONNELLY: Mr. Chairman, has the witness completed his statements?

THE CHAIRMAN: Senator Donnelly.

Q BY SENATOR DONNELLY: Have you completed?

A BY MR. OAKES: On this subject, yes, sir.

Q I just wanted to comment further on the report that was made in which you criticized the committee, I might call your attention to the fact that when this investigation was made by the staff of the committee, and I have no apologies for what they reported to our committee to get the report before the Senate so that we would have the authority to go further -- the report states on its -- on the first page:

To: The Honorable Stanley Arnold, Chairman
and members of the Senate Fact Finding
Committee on Governmental Administration
State Capitol, Sacramento 14, California

Re: Analysis of the -- and so forth -- The Staff
Report on Management Examination of the 22nd Agricultural
District, and so on. It is a report of the Staff. I
have no criticism of the staff for the report they made
or their efforts.

It is our duty, as a committee, to find out if those
statements are true and that's all we are here for, and
that's all we intend to do.

A That's fine, sir. No criticism was intended.

Q I wanted to explain to you why it is in the
form it is is because the staff cannot ask the Senate
to publish a report, but the members of the Senate can.

A I see.

With the Chairman's permission, Mr. Smith would
report to you what he found out during the luncheon recess
concerning the Golden Gate lease, the questions that were
asked.

THE CHAIRMAN: We would be glad to receive it.

THE WITNESS MR. SMITH: Senator Miller, I thought
it would help to get it in the record. I thought I knew
the story. I wanted to check back with Golden Gate to
confirm it to make sure I was going to give you the right

story on it. The original Golden Gate plant was built by the -- a corporation called Golden Gate Turf Club; they built this on a ground lease -- ground lease only with the Atchison, Topeka & Santa Fe Railroad. They operated a few days before the war and then had trouble, the war came along and actually, they had no money. There was some five hundred and some thousand dollars -- in fact, there was more than that in obligations to creditors, mechanic's liens and so forth that were unpaid.

After the war, the Santa Fe Railroad picked up all of the liens and all the obligations. Now, whether they paid fifty cents, seventy-five cents, a dollar, or ten cents on the dollar, I don't know that, but they picked up all of the grounds. The lease was then made with a company called Pacific Turf Club, Incorporated, which had no connection whatsoever with the original lessee. We think it's a direct case with the lease here.

The lessee at Golden Gate, the Pacific Turf Club, Incorporated, did not build any of the buildings; the structures were on the grounds and the structures were furnished by the lessor, which was the Santa Fe Railroad. There is a provision in their lease that they can build certain buildings on the property, and if they do, they can remove those buildings when the lease is up.

That's as close as I can get, and that's actually the situation up there. It's, to me, identically

the same as the situation down here.

SENATOR MILLER: Mr. Chairman.

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: Except you left out part of it.

A What part was that?

Q You left out the part where Santa Fe got stuck with some of the bills of the first operation.

A I said that they picked up the bills and paid all of the obligations of the original company, which had gone bankrupt, picked up all the mechanic's liens and all the creditor's liens and paid those off and cleared title to the property, which gave them then all the property, including the buildings.

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR MILLER: Pardon me, their cost was not part of the total cost of the total capital outlay?

A Well, gentlemen, if somebody gave me the Bank of America, couldn't I charge fair rent for it?

Q I didn't ask that. We went through that once this morning.

A I know, but that's the point.

Q I understand that. I made it quite clear this morning.

A BY MR. OAKES: The point is that under this lease, which pays a less^{or} rent than we pay, the landlord

furnished the tenant a full and completed racing plant, the same as the District furnishes to us.

Q The fact also remains, Mr. Counsel, that the Santa Fe Railroad found themselves in the position of gaining a rather -- a windfall of rather dubious value, as a matter of fact. The Santa Fe Railroad is in the business of leasing land and running railroads, and all of a sudden they found themselves with a debt that they thought wasn't theirs, because their counsel had made an error, and they had to pick up part of the tab; however, the amount of the tab, as I understand it, that they picked up was not the total cost of the capital outlay by a long shot.

A Yes, but that wouldn't be a factor in negotiating this new lease, would it?

Q Oh, yes. Oh, yes. A factor in the negotiating of the lease? Why, of course, it would.

A The cost to you of a piece of property --

Q Of course it's a factor.

A -- is not a factor. The factor is the fair rental value at the time you make the lease.

Q The fact remains -- let's take another examination of it there then -- the question of whether or not its a distressed property is certainly a factor in the negotiation of a lease.

A It's the finest racing plant in Northern

California.

Q The finest racing plant in the world doesn't do you a darn bit of good, unless you have some racing dates, and you know that better than I. The Santa Fe Railroad Company had no racing dates, right?

A That, of course, we know; the Santa Fe themselves had no racing dates.

Q They have a very limited number of racing dates now. The only thing they can figure to do in the place in the off season is run an oversize pee-wee golf course in the infield, and it's very profitable for both the operator and also for the --

A For the race track; I understand it is.

Q Yes, I understand it's a very good operation, but I don't think you could -- anyone could just politely say that these are not factors, because they are factors. The fact remains that they did not build a plant for the Pacific Turf Club, or whatever their new tenant is. They inherited a plant in which they played some part; the thing was in distress, and they made a lease. I think anytime we are attempting, on the basis I am projecting, or the basis Mr. Smith is projecting, to say that this is a fair lease from which you can make comparisons of other racing plants, I think we are both kidding ourselves. I just don't think you can do it, and the fact also remains, sir, that I didn't raise this issue.

This issue was raised in what the Operating Company of the Del Mar Turf Club very modestly refers to as a factual report by the Operating Company of the Del Mar Turf Club, and also raised in the testimony of Mr. Smith, and was used as a basis for comparison.

A Yes, sir.

Q To indicate that the lease --

A Yes, sir.

Q -- the lease, the present lease was an equitable one. I just don't happen to think that's the case, and we have discussed what I think at quite some length, but I think we should also point out that in any lease arrangement, one of the questions that enters into the negotiation is how much am I involved in this property, and what are my chances in getting a fair return on what I have invested as well as what is the total value of the property; has it appreciated; the windfall, the debt they picked up, I think are certainly all factors to be taken into consideration, and this was certainly not a situation where a lessor built a race plant for Pacific Turf Club, or for anyone else.

And the other two comparisons that you have in here, the Maumee Downs, or whatever they call it --

A Maumee Downs.

Q -- I don't know whether that means anything, or whether it doesn't, because if that's a sweetheart agree-

ment of any sort, why, it certainly doesn't indicate anything, and I don't know anything about Fairmount Park in Collinsville, except some figures stated, and it occurs to me it states they pay \$75,000, or three-quarters of one percent of the mutual² handle, and you are talking about a guaranteed price for a facility, the value of which is unknown as far as this committee is concerned. Whether you folks know about it, I don't know. The three-quarters of one percent is a bonus --

A BY MR. SMITH: Oh, no.

Q That is not true?

A Whichever is greater. You have a guaranteed rent with a three-quarters of one percent --

Q They get \$75,000 if they don't do any business?

A Right.

Q And they get a bonus, the difference between \$75,000 and three-quarters of one percent of the gross handle, if the figure is larger than the \$75,000, so I don't know what kind of a comparison we are making there, except we are saying that there is an agricultural society near Toledo that rents to a race track. The other one -- I don't know who they are -- Fairmount in Collinsville, also leases their race track. I don't know them, but we will assume they are an agricultural society, fair, or something. I don't know from what you say that there is any indication that this is a fair price, and I certainly

don't know that it isn't.

A Well, Senator, those were submitted to you for the purpose of analyzing the different leases that we could get ahold of. Now, there are very few race tracks leased, as I told you. It's not easy to find these. I thought the more experience you had in reading over the terms of the various leases, the better chance you had to determine this a fair lease, to bring out the fact that where there are percentage of gross leases, that generally is the only determining factor.

Q This was sort of a bibliography that you submitted to us, rather than a statement of a comparable lease.

A BY MR. OAKES: Yes, sir.

A BY MR. SMITH: That's what I said.

Q I see.

A BY MR. OAKES: We are not appraisers, and it wasn't until today we had an opportunity to present to you a qualified appraiser who went to really the guts of the thing. The question is whether the amount below the line is a fair rent or not, isn't it?

Q No.

THE CHAIRMAN: Now, was there something further that you gentlemen wish to present?

THE WITNESS MR. OAKES: That covers all of the matters that we were in question on this morning.

MR. WATERS: I have some further questions.

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: On this basis of comparison, Mr. Smith, you will agree that we are not in position to make the comparison unless we know what the various lessors are furnishing, the value of the property and the arrangements between them as to maintenance, the period during which they are occupied and so forth, so that just giving us figures as to what they pay, doesn't -- doesn't give us very much, because we don't know the size of the operation, the amount of the handle, or what is involved?

A Correct. (BY MR. SMITH)

They are given for your study or for your information to maybe give you a clue as to where you can find things to evaluate these leases properly.

Q Thank you very much, Mr. Smith. I think we should pursue that and find out exactly what they are if there is any comparison to be made.

Mr. Oakes, I have a question. You referred to a letter the Turf Club received from Mr. Mannen, regarding the Harness Association?

A BY MR. OAKES: Yes, sir.

Q You read from that?

A Yes, sir, I just read that letter into the record. Yes, sir.

Q You read the entire letter in; would you submit a copy of the letter, please?

A Yes, sir.

Q May I ask if that is the only record the Turf Club has so far as any agreement between the Turf Club and the District for the authority for the Turf Club to manage the property during that Western Harness Association --

A Well, you must remember that all of these transactions occurred before our regime, and in the short time that we had to try to get written records, this was all we found.

I will state that at the District Directors' meeting last -- I believe it was last October, of '59, this matter was discussed, and at that time we were told by two or three members of the Board, that they remembered that the matter was discussed by the Board in 1953, just before this letter was written, and Mr. Mannen was instructed by the Board to write this letter.

Now, I don't know whether there is anything in writing on the minutes of the Fair Board of Directors or not, but that was the statement that was made at that meeting and that's really all we have gotten so far.

Now, there may be other things, but we haven't been able to find them so far.

Q Well, Mr. Oakes, the fact is that the Turf Club did operate up until this year?

A That's right.

Q Under some sort of an arrangement, so that the

records that gave you authority to make those arrangements should have been in your file up until this year, ordinarily, is that not true, Mr. Oakes?

A We have records of all the financial transactions if that's what you mean.

Q No, sir. I am talking about the agreement under which the Turf Club undertook to manage the property outside the period of the regular occupancy of the lessee.

A Well, as I say, this is the only one we have found in the -- only document we have found in the -- in this period, the short time we had to look.

Q And ordinarily, you would not take possession of somebody's property on the basis of some discussion someone had at some meeting; you would want something in writing, would you not, sir?

A Well, let -- you are talking about what Western Harness would do. We didn't take possession of anyone's property.

Q You managed the property?

A No, sir. We just provided maintenance, house-keeping and that's provided for in our 1953 extension.

Q Well, wasn't there an arrangement between the -- between the Harness Association and the Turf Club?

A Yes, that they were supposed to pay us so much per horse and so on.

Q Wasn't there something in writing between the

Turf Club and the Harness Association?

A I assume there was.

Q Mr. Smith, was there not?

A BY MR. SMITH: Yes, there is a contract between them.

Q Between the Harness Association and Turf Club?

A Correct.

Q All I am asking, Mr. Oakes, is, as an attorney, you would not advise someone to take -- manage someone's property, ordinarily, unless they had something in writing; is that not correct?

A We are not managing anything, Mr. Waters. All we are doing is providing maintenance for the housekeeping of these Western Harness -- (BY MR. OAKES)

Q You are allowing someone --

A -- people. Please. And that's under -- that's provided for in this '53 agreement. It says in any interim use. Well, let's look and see what it says.

Q Well, who allowed the Western Harness Association to come in there?

A The District. They had been coming in there since 1947, and the District was the one that let them come in. We didn't have anything to do with that. It wasn't until '53 when the District asked us to that we had anything whatsoever to do with it.

Q Did I misunderstand the letter that you read into

the record that Mr. Mannen asked the Turf Club to make the arrangements between the Turf -- Harness Association and the Turf Club to come in there and use the property; isn't that what the letter says?

A No. You want me to read the letter again?

SENATOR MILLER: Please do.

THE WITNESS MR. OAKES: This is a letter on the letterhead of the San Diego County Fair, and it is signed "22nd District Agricultural Association, Paul T. Mannen, Secretary-Manager, and it is directed to Clive Becker (phonetic), Acting Manager, Del Mar Turf Club, Del Mar, California. It is dated November 5, 1953, and it reads as follows:

"Dear Clive:

"Inasmuch as your organization will be handling the maintenance of the grounds, starting January 1, 1954, it appears that it would be wiser that you also handle negotiations with Western Harness Racing Association for the stabling and training of horses here during the winter season.

"The WHRA is anxious to start stabling horses here about December 1st this year, and have a three-year contract for the period December through March. Any reasonable agreement that you may make with them to stable horses at the Fairground will meet with our approval.

"We do not expect you to lose money or to make a profit on this project, and suggest a contract with

them similar to that under which we have operated in the past.

"The WHRA paid all maintenance expenses incurred in the stable area and on the track during the period of occupancy. You have our approval to start the program December 1 of this year and continue it for three winter seasons."

Q BY MR. WATERS: Now, Mr. Smith, that is the only record of any agreement between the Turf Club -- or any authorization from the District that the Turf Club has?

A BY MR. SMITH: As far as I know. yes.

Q And you entered in then on the basis -- or not you, but the Turf Club entered in on the basis of that letter into an agreement with the Western Harness Association to stable horses, which I -- I am not going to quibble with Mr. Oakes about wheter that's allowing somebody to use the property, but I would think that if you say you can stable your horses here, it's the use of property -- that was for a three-year period?

A Correct.

Q And subsequent to that, when you were President, you entered into a further agreement for that same use?

A Correct.

MR. WATERS: Thank you.

Q BY MR. WATERS: Now, Mr. Oakes, one further question, please. You made the statement here a few minutes

ago that no one has raised any question about the validity of the lease, or cast any doubt on the lease for twenty-three years.

I would like to ask you if you know --

SENATOR MILLER: Mr. Chairman, may I interrupt?

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: Did you make that statement?

A BY MR. OAKES: Yes, but I will qualify it by stating in my opinion, nobody has.

THE CHAIRMAN: I didn't hear the last statement.

THE WITNESS MR. OAKES: To my knowledge, no one has questioned the validity of the lease. The only -- the only document that has come to my attention, and the only thing verbally that has come to my attention was a request from the Department of Finance to the Attorney General, I believe it was in 1945, asking the Attorney General to give an opinion as to whether -- well, the opinion; it's quite long -- there was a half a dozen questions. But the sum and substance of the questions was does the fact that the Del Mar Turf Club failed to race during 1942 -- no, '43, '44 and '45 affect the validity of the lease, and the Attorney General's opinion, written by Mr. Augustine, as I recall, was to the effect that it did not.

It's a long opinion. It's several pages, but there was no question from the Department of Finance directed to what has been raised in your supplemental report, no

questions as to whether or not the 1936 agreement was void in its inception. That was not covered in the question by the Department of Finance or in the answer by the Attorney General.

Q BY MR. WATERS: Were you attorney for the Operating Company in March and April and May of 1956?

A Yes, sir.

Q And subsequent thereto?

A Yes, sir.

Q Did you know of a letter addressed to Mr. Paul Mannen by Mr. Louis Heinzer (phonetic), in which certain questions were raised as to the -- to the lease and as to the arrangements that were made and which -- in which he refused to approve some new agreements?

A Yes, sir, I am very well acquainted with that letter.

Q So that there was some doubt cast in '56?

A No, sir. No, sir, if you will read Mr. Heinzer's letter, you will see he is merely discussing whether a new agreement could be made at that time between the Operating Company and the 22nd District. He does not raise any question concerning past agreements. He was merely passing -- What happened there was this: It was decided between the District and the Operating Company that it would be desirable to construct additional stable facilities, and, as in the past, the question of financing those stable

facilities was raised, and the District asked the Turf Club if we would finance that construction cost and we said we would, and I drafted an amendment, another one, would have been the eighteenth or nineteenth amendment to this -- to this lease, and we took it up to Mr. Heinzer and he questioned whether or not, in view of certain very technical and vague legal points, whether or not a -- an amendment agreement between the Operating Company and the District -- he questioned whether that might not be a new lease, and therefore, in violation of Section 87 of the Agricultural Code, and he recommended that we do not enter into the agreement as proposed, and he suggested that a similar agreement could be entered into between the Del Mar Turf Club and the District, or between Boys Incorporated and the District, provided Boys Incorporated assumed the lease, but he -- he did not want to approve of an amendment between the Operating Company and the District, because he said that might be in violation of Section 87 of the Agricultural Code.

Now, he raised no question concerning the validity of any of the past documents. It was never even discussed.

Q Mr. Oakes, rather than you interpret from memory what he said, may I read one paragraph from the letter?

A I would -- Excuse me, sure, please.

Q "It becomes apparent that prompt and careful attention must be given to the taking of such steps,

or the making of such legal determinations, as will preserve the legal status of the existing Franchise Agreement, having in mind Section 87, Agricultural Code and the necessity of protecting the rights of the District."

Now, it would appear from that that there was some doubt in the Department and some questions in the mind of the Department of Finance as to where this agreement stood, and that was in 1956.

A Well, now, if I may say so, I just can't agree with that interpretation at all.

SENATOR FISHER: I would submit --

THE CHAIRMAN: Senator Fisher.

SENATOR FISHER: I would submit that the language would conform with Mr. Oakes' opinion.

THE CHAIRMAN: I will agree with you, Senator Fisher.

MR. WATERS: Well, I would ask that the letter be introduced as an exhibit in the record. The entire letter can be read in context.

THE CHAIRMAN: We will accept the letter for the record.

Q BY MR. WATERS: Now, Mr. Oakes, you were attorney in 1959 for the Operating Company?

A BY MR. OAKES: Yes, sir.

Q Were you aware of the fact that the District Board had requested the Attorney General for an opinion as to the validity of the lease in 1959?

A I read it in the paper. That's the only knowledge I had of it.

Q And that occurred before any report of this committee; as a matter of fact, before any examination of their records was undertaken?

A Well, as far as I am concerned, the series of events commenced sometime in the early part of '59. Now, just who was doing what and whether it was this committee, or whether it was the 22nd District Board of Directors, and so on, I don't know, because we had no communication with anybody, and all we knew was what we read in the newspapers, but the whole investigation started, not by this committee perhaps, but by the 22nd District Board, sometime in the late winter of '58, or the early spring of '59, and when I say up until that time, I am talking -- I knew of no question of the validity of the lease -- I am talking about that time.

Q Well, Mr. Oakes, I think it's the purpose of this committee hearing to find out who was doing what.

A Well, you have to interpret your own purposes.

Q You say you didn't know --

(Off the record discussion between Mr. Waters and the Chairman).

Q BY MR. WATERS: Mr. Smith, in your presentation to the committee, you have said that the rent in 1937 was some thirty or forty thousand dollars?

A BY MR. SMITH: \$37,000, I believe is the figure.

Q And in 1959, it was three hundred seventy, or something?

A \$391,000.

Q And then, you conclude that that's a thousand percent increase in rental?

A Uh-huh.

Q In 1937, how many racing days were -- did the track conduct racing?

A Somewhere around -- I have got those old records.

A BY MR. OAKES: That's in here someplace. This is your report.

Q The records are from the Horse Racing Commission.

A BY MR. SMITH: That's right. We have the same records. Twenty-two.

Q In 1959?

A Forty-nine.

Q So that the number of racing days were almost doubled?

A That's right.

Q And in 19 -- have there not been some extensive additions to the property made since 1937?

A Yes. I think that's all reviewed in the report, and all broken down. That's right.

Q So that the plant that was being rented in '37 is not the same plant that you are in possession of today?

A Correct.

Q And further, was not the handle in '37 very much smaller than the handle in 1959?

A Well, yes, that was rather obvious from the rental percentage basis.

Q And this is a percentage lease?

A That's right, surely.

Q So that that isn't quite a representative statement to say that the rents increased a thousand percent, is it?

A Well, the rent has.

Q Well, for an entirely different thing --

SENATOR MILLER: Well, let's -- Mr. Chairman, it seems to me you have to get down to where you are talking about rate or you are talking about proceeds from the rate.

MR. WATERS: All right.

SENATOR MILLER: You are not going to get any place.

Q BY MR. WATERS: All right, Mr. Smith, you testified that this agreement was approved by the now Chief Justice Earl Warren; when did he approve it?

A BY MR. SMITH: I didn't say that, Mr. Waters. I said that all of the agreements were approved by the Attorney General, starting with U. S. Webb and including the present Chief Justice Earl Warren, and the present Governor of California Edmund G. Brown.

Q Which agreements were approved by Mr. Warren?

A Whatever agreements were written between -- while

he was in -- in the Attorney General's Office. What were those years, exactly; was it '38 or '39?

Q He went in in '38.

A All right. Let's see here --

Q Then, the statement you were quoted as making in the San Diego Union on March 31, 1960, was that a misquote?

A It could very well have been.

Q May I read it to you?

A Yes, let's not start reading quotations out of the newspapers. I have a whole file of them here.

Q "Mr. Smith says the opinion of attorney Sheets is contrary to the opinion of the Chief Justice of the United States, who approved the original lease in '36 as Attorney General of California."

A That's an incorrect statement.

Q Earl Warren, as a matter of fact, was not the Attorney General in '38?

A No, there were documents that were signed from '38, and he went through, was it '40?

Q As a matter of fact, he was not Attorney General until '39, Mr. Smith.

A '39?

Q And I don't find any documents that were approved during his period of occupancy of the office. I don't -- I don't think that that's very pertinent to the matter anyway.

A That's right.

SENATOR MILLER: Campaign oratory. Mr. Chairman.

THE CHAIRMAN: Senator Miller.

SENATOR MILLER: I thought Mr. Waters was through.

Q BY MR. WATERS: I would like to ask Mr. Smith: Were you a member of the Board of Directors of the Del Mar Turf Club in '46-'47?

A Yes. (BY MR. SMITH).

Q Why was there no racing conducted in those years?

A '46 and '47; there was.

Q There was racing conducted in '46 and '47?

A Yes. Your report shows thirty-five days of racing in 1946, and 1947 shows forty-one days racing in that year.

Q All right. I will accept that then, Mr. Smith. Apparently the Division of Audits -- Audit report is in error, because they reported there was no racing in those two years.

Getting back to the matter of parking, that area across the road that was in use yesterday as an arena for the sports cars, do you know when that was acquired by the District?

A No, I don't, sir.

Q Was that acquired before you became the --

A Well, I think most of that area has been a -- a part of the grounds for a long time. I can't remember when

we didn't -- there wasn't parking over there. I won't say that it hasn't been added to it somewhere along the line, but as far as the parking in that particular area, it's always -- in my memory, we have always parked over there.

Q And to your knowledge, you are not using any areas of the District property for parking that were acquired after the agreement?

A No, I wouldn't know. You would have to tell me what they have acquired and I could maybe give you the answer, because I know where our parking is and what we use, but there might be something I don't know about and they have acquired.

Q Do you know when the Harvest Hall was built?

A Yes.

Q That was within the last two or three years?

A Right.

Q That would be after the agreement?

A Right.

Q Did you use that building for parking at any time?

A Yes.

Q Referring to this question of comparison of leases -- the Operating Company, which operates for profit, pays to Boys of America, Incorporated ninety percent of its net profits as rent, does it not?

A Correct.

Q That would be a much more favorable lease than the Operating Company or the Boys Incorporated, or Turf Club, as it started out with, has with the District, would it not?

A I think there is an entirely different purpose involved.

Q The purpose is rent, is it not?

A No, I mean -- but it definitely is established for the benefit of charity and for the distribution of Boys of America, Incorporated.

Q As far as Operating Company is concerned --

A Operating Company pays its rent to Boys Incorporated, that is right.

Q -- Operating Company is organized for profit, and as far as Operating Company is concerned, ninety percent of the profits is for rent and deducted as such?

A Correct.

Q That's a more favorable lease, is it not?

A I would say so.

Q And that lease includes, therefore, profits from parking, admissions, Turf Club memberships, food and beverage concessions and all the other revenue producing activities connected with it?

A Correct.

MR. WATERS: I have no further questions.

THE CHAIRMAN: Any further questions by the committee?

SENATOR MILLER: I would like to ask one more if it will

fit into the agenda.

THE CHAIRMAN: Senator Miller.

Q BY SENATOR MILLER: Mr. Smith, you mentioned you are allergic to newspaper quotes, but you have got them there before you. I have got one here before me. It said -- this is from the San Diego Union, I believe -- "Donald Smith was quoted as follows: 'Something besides interest in the State's welfare seems to be involved in this. The very fact there is no sound reason behind what they are doing indicates there is someone behind it.' Smith did not elaborate on who this someone" -- this is outside the quotes -- "Smith did not elaborate on who this someone could be or what other interest could be involved."

Mr. Smith, I don't know whether this is more campaign oratory, or -- like the statement about Mr. Warren, or whether you had something in mind, but I think if you are going to make statements like this, the members of the committee would like to know if you do have anything in mind and what it is, because if we are going to be chasing somebody else's chickens, we would like to know whose chickens they are, and when we get them all back into the henhouse, we want to make awfully sure we don't leave the fox to guard the henhouse, so we would like to have you tell us just what is involved here.

A BY MR. SMITH: As a matter of fact, I am not

quite sure of the accuracy of any quote in the newspaper. I understand that the folks at this table understand that very well. The reason I brought these up was not to be quoted. It's just the -- showing why people have the impression there might be a chance the racing would be taken away from Del Mar, because of the presentation in the press about the lease's validity and so forth; it's a positive thing and it does cause a question in people's minds.

Q Are you of the opinion, Mr. Smith that there is someone who is attempting to do anything ulterior that has any connection with this committee in any way?

A No.

A BY MR. OAKES: No, we want to make it clear. There is no thought in anybody's mind, nor have I heard any mention by anybody of any suggestion or suspicion that there is any ulterior motive on the part of any member of this committee.

Q This sort of leads you to believe something else if the quotation were accurate that something besides the interests in the State's welfare seems to be involved in this, which indicates, I think, by innuendo, that there is -- that somebody is prodding this committee to take a look at this thing for other than the State's interests involved. I think it's likewise repeated when it says, whatever this means, "What they are doing indicates there

is someone behind it", if that's an accurate quote, or reasonably accurate quote.

A BY MR. SMITH: I couldn't tell you exactly whether it is a reasonably accurate quote even, because -- what paper was that in, do you remember?

Q The statement says it is an excerpt from the San Diego Union headline, it says. I assume it was prepared by the staff or investigator, or someone; is that correct, Mr. Chairman?

A I didn't think I ever made the headlines in San Diego.

THE CHAIRMAN: Mr. Waters can answer the statement.

SENATOR MILLER: Apparently it may not be headlines, but it says headlines here. Apparently headlines are erroneous.

THE CHAIRMAN: The date?

SENATOR MILLER: I don't think it's of any consequence whether it's a headline or not, or in the body of a newspaper or in the caption perhaps.

THE CHAIRMAN: You asked about a date, Mr. Smith. It was December 16, 1959.

THE WITNESS MR. SMITH: I wouldn't have the faintest idea. That seems like an awfully long time ago. Actually, this thing has been kicked around so much, so many quotes, misquotes -- we have files of them, and probably you do too. I hope we don't depend on the newspapers, in all apologies

to you gentlemen. We do have a lot of problems. There are a lot of individuals talking about it; there's a lot of confusion.

I wish we could get together with the committee and work it out and have something worked out that is not going to -- as I say, it has hurt this year, hurt our business. We have a lot of people coming out. I have people from Kansas City asking should I get them a place. This has caused undertainty.

I don't know, if nothing else, I think if the committee could come out with something positive, "We are going to race this year," -- what you do in the future, I don't know; get that settled so we could go ahead and plan.

Q BY SENATOR MILLER: You are not of the opinion that there is anything other than public welfare involved in this investigation by this committee, are you, sir?

A Of course not.

Q If someone is behind it, it's the chairman trying to move the committee members to do their work?

A Yes.

SENATOR MILLER: That's all I have, Mr. Chairman. Thank you.

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: Mr. Oakes, I have got here what purports to be a photostatic copy of an agreement dated

March 14, 1957, between Operating Company, signed apparently by Donald B. Smith, and Western Harness Racing Association by Preston H. Jenuine, it looks like, Vice-President and General Manager. I will ask if that, as far as you recollect, is a fair -- it is a copy of the actual agreement entered into on that date?

A BY MR. SMITH: That's it.

Q Between Operating Company and Jenuine?

A BY MR. OAKES: Yes, sir, this document looks familiar. I am sure I saw it at one time, probably before it was executed.

Q Probably I should have asked that question, although you testified about an agreement with Western Harness, I should probably have asked Mr. Smith, because it appears to be his signature at the end.

A BY MR. SMITH: That's the document we signed for the second three-year period.

Q That's the arrangement that you had with them for that three-year period?

A It was almost exactly continuing the other three; almost the same document.

Q So the prior document was similar to that?

A Yes.

Q And that does purport to give exclusive right to the use of the race track and stalls for that period of time?

A That was the -- the first one was the continuation

of the one the District had; we just carried on the idea, and never thought anything about it.

Q It prohibits any similar use during that time by anyone else. I think that's what it says; I am not sure.

A That's a protection Western Harness set up, but actually we never -- was never applied. If anybody needed a few stalls, had to come in there, it was permitted.

Q You have, in fact, permitted other stalls to be used by people other than Western Harness and they never objected?

A Oh, no.

Q I just want to have it identified. I thought it was a matter of some discussion, so it ought to be put in the record.

A BY MR. OAKES: This covers the second three years of our six-year maintenance arrangement with the --

SENATOR FISHER: Mr. Chairman, since that has been discussed, I thought it might be well to have it a part of the committee's record.

THE CHAIRMAN: It will be accepted as part of the Committee's record.

Q BY SENATOR FISHER: Mr. Oakes, the document, which is Exhibit 8, beginning at page 57, and that which is Exhibit 9, beginning on page 72 of the supplemental report are denominated, respectively, the Sub-Franchise Agreement between the Del Mar Turf Club and Operating Company, and an Assignment and Grant Deed between Del Mar Turf Club and Boys

Incorporated of America; those agreements you are familiar with?

A BY MR. OAKES: Yes, sir.

Q By virtue of that agreement, Del Mar -- those two agreements -- I'm sorry. Withdraw that.

By virtue of Exhibit No. 8, which is Sub-Franchise Agreement, Del Mar Turf Club did sub-lease -- sub-franchise the entire operation to Operating Company for a rental of ninety percent of the net operating profits, as defined in that agreement; is that not correct?

A I think that's substantially correct, yes, sir.

Q And by virtue of that, I will call your attention to Page 67, Section 9, the last sentence thereof, it says:

"If the use of the Premises contemplated hereunder should at any time during the term hereof be prohibited by law or ordinance or other governmental regulation or prevented by injunction, or if there be any eviction by title paramount, this Agreement shall not be thereby terminated, nor shall Operating Company be entitled by reason thereof to surrender the Premises or to any abatement or reduction in the rentals payable hereunder nor shall the respective obligations of the parties hereto be otherwise affected."

By virtue of that clause, would it not be true that Del Mar Turf Club, standing as the Landlord of Operating Company on that date, at the time of the execution, was

entitled to its rental, no matter what sort of difficulties the Operating Company got it into by way of cancellation or right to use the grounds or not?

A Well, I would off-hand be of that opinion, but I would not want to have to stand on that opinion after some study and research if I changed my mind.

Q Well, I understand that, but I thought it was a rather surprising term to find in a lease where all of the rental was to come by way of a percentage of the -- of the income.

A That's not true, you see, because there's a minimum rent of \$250,000 a year.

Q In any event, so that would be a continuing -- at least, as far as yours and my curbstome opinion, that would be that there would be a continuing obligation of the Operating Company to make that rental payment to the landlord, the minimum of \$250,000 a year?

A This is an interpretation not particularly favorable to my client.

Q Well, I am exploring it, and maybe anticipating another witness. I am not sure, so that, in any event, at least, at first blush it would appear that that would be a continuing obligation, even though the Racing Board permitted no racing dates, even?

A That's my tentative opinion too.

Q And so that when the next document, which is

Exhibit 9, and designated the Assignment and Grant Deed to Boys Incorporated -- with that, Boys Incorporated succeeded to the Del Mar Turf Club's remaining interest in the property and in effect became landlord, did they not, as to Operating Company?

A I would prefer, Senator, that questions of this nature be directed to George Anson, the attorney for Boys Incorporated, and let him give you his opinion on it.

Q Well, as the lawyer and Director of the Operating Company, do you consider Boys Incorporated to be your landlord?

A Yes, sir.

Q And you hold only under it by virtue of Boys Incorporated, however they got their title?

A Well, they are successor in interest to the Del Mar Turf Club, under whom we hold.

Q Well, you were, as I recall, Del Mar Turf Club -- Let's see -- You originally held under Del Mar Turf Club?

A That's correct, sir.

Q And their interest appears to have been assigned and granted to Boys Incorporated?

A Yes, sir.

Q And your understanding is then that they do act as your landlord?

A Yes, sir.

Q And they are entitled to --

A We certainly pay them a lot of rent; I know that.

Q And they are entitled to all the rents that become payable under the sub-franchise agreement, which is Exhibit 9?

A Yes, sir.

Q And your rental to them includes a ninety percent of your net income, not only from the -- not only from the racing itself, but also from the operation of food and parking, and any place else you may receive income?

A Our entire net income, yes, sir.

Q And can you tell me how much of the rental you pay to Boys Incorporated is attributable to income other than income by virtue of your share of the handle?

A BY MR. SMITH: Well, let me answer that in this way, Senator Fisher: Actually, if you will look at the -- at the gross income from admissions, parking concessions and programs, you will note it is about a million dollars; our profit is about five hundred to five hundred and fifty thousand, so if we had to exist on our mutual commission alone, we would lose approximately four hundred and fifty thousand dollars in forty-two days. Actually, it's like -- well, like almost any sport today, you -- and even like the movies -- you live off the peanuts and the popcorn.

It's very strange, but it's the condition that racing is, and all over in California, it's the same story. There's no track that shows any different picture. They depend for their profit from these sources of revenue.

Q So actually, most of your net income is attributable to your operations other than your part -- share of the pari-mutual handle?

A No. You can interpret this anyway you want. I am giving you the actual factual figure as to how it operates. We could turn around and say no, it all comes off -- out of the mutual income and say we pay it out of this income here, but it's the picture, and you want an overall picture, and actually, this is true.

Q And you have paid, since July 26, 1954, what total of money to Boys Incorporated, roughly?

A We have paid in lease rentals to Boys Incorporated, \$1,400,957.

Q Is that -- has that averaged about \$250,000 a year then?

A No, it doesn't do -- work that way.

A BY MR. OAKES: We are getting now into the original agreements, this Exhibit 7 and 8, and under 8, there was a reservation of rents, and again, I would like to defer to Mr. Anson and let him describe the transaction. He is the -- the father of the transaction, and I would hesitate in his presence to explain it.

Q Well, you had, under Grant Deed, which is 9 -- I think you said 7 and 8; you meant 8 and 9?

A 8 and 9, okay.

Q Under, and by virtue of that, there was -- appears

to have been a \$250,000 initial consideration, plus a \$257,000, or \$245,000, I forget which -- I am sorry. I will withdraw the question and start over again.

Under the Assignment and Grant Deed, there appears to have been a \$250,000 consideration, and then there was, in addition to that, a reservation of -- by the Del Mar Turf Club and its successors, or its assigns a further reservation of rentals, which Turf Club had theretofore been entitled to receive, at least according to the face of the document of a million nine hundred and eighty thousand dollars; is that correct?

A No, not theretofore received, but a reservation of rentals to accrue in the future.

Q To which they were entitled up to the time?

A Under the second Franchise Agreement, which were reserved and retained by the old Del Mar Turf Club, and the --

Q And so when you give us this figure of a million --

A BY MR. SMITH: Forty-one thousand .

Q -- forty-one thousand, that includes part of that?

A No.

A BY MR. OAKES: I think this, Senator: Again, I suggest let Mr. Anson, in due course, take the stand and explain this whole transaction under 8 and 9 from beginning to end, so that we can all follow it, rather than to go at it this way, because there will be so many questions that I won't know the answers to that I think for the standpoint

of clarity and the benefit of the committee, that if Mr. Anson would explain this thing, and I am sure he will be glad to, right through the whole transaction; then, you can ask questions and get an answer that is foursquare correct.

Q Well, this million forty-one thousand does get involved in that, so you don't want to have to explain that, because he is in a better position to explain it; is that it? I just didn't understand your reticence when I said is this --

A Well, as I understand it, and let Mr. Anson explain it too, but as I understand it, there has accrued a rental under the Sub-Franchise agreement this million forty-one, plus this million seven hundred eighty thousand.

Q So the million forty-one is your rental, the regular rental you would be required to pay as the ninety percent?

A The two figures combined make up our ninety percent for the six or seven years that we have operated under that sub-franchise.

Q You have paid both of those figures?

A Yes, sir.

Q The million forty-one and the seven hundred eighty thousand?

A Yes, and additional amounts.

Q Making it --

A BY MR. SMITH: Senator Fisher, actually, this -- there is no question with the fact that the Boys Incorporated structure is complicated, and I think that with Mr. -- Mr. Anson came out here for the specific purpose to clarify it for you, and if you gentlemen really want to know from the fellow who started it, who knows these documents better than anybody else in the country, he could help you and clarify it for you. I was sure it would be a big help to you.

Q I was hoping to avoid asking Bob to come back again. Maybe he is going to be here anyway.

A BY MR. OAKES: I assume I will be here.

THE CHAIRMAN: Thank you, gentlemen. I understand we have overrun our time here, and we are encroaching upon a very dramatic presentation to be played from this stage by the school tonight, and they are anxious to get the stage set up.

I would like to ask you, Mr. Smith, if you would be with us Wednesday morning for a short time.

Thank you very much and we will recess until --

MR. ELY: Excuse me, sir. I am Walter Ely, representing Boys Club of America, and I am just wondering what the committee wishes are with respect to our witnesses who are here.

THE CHAIRMAN: I was just going to get to that, Mr. Ely, and ask you and Mr. Anson to be present tomorrow morning at

9:30.

MR. ELY: Thank you, sir.

THE CHAIRMAN: Those under subpoena will remain so, and we will recess the hearing until tomorrow morning at 9:30.

(Whereupon a recess in the proceedings was taken until 9:30 a.m., Tuesday, May 17, 1960.)

SAN DIEGO, CALIFORNIA, TUESDAY, MAY 17, 1960, 9:30 A.M.

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(SECOND DAY)

THE CHAIRMAN: The Senate Fact-Finding Committee on Governmental Administration will come to order.

I would like to have the record show, and introduce to you at this time on my far left, Senator Randolph Collier of Yreka, representing Mendocino, or Siskiyou and Del Norte Counties, sitting with the Committee this morning.

Mr. George Scott.

GEORGE A. SCOTT,

called as a witness, having been first duly sworn, was examined and testified as follows:

THE CHAIRMAN: Have a seat, Mr. Scott.

THE WITNESS MR. SCOTT: My name is George A. Scott. I am a member of the Board of Directors of the Boys Incorporated of America, and in addition to that, I, with two other San Diegans, have the challenging opportunity of forming the -- what is known as the California Committee of Boys Incorporated.

This, as I will detail to you, in order to get clear my role here, gives us the opportunity of making the recommendations covering the distribution of seventy-five percent of the funds which are made available to us under the ninety percent rental clause, which we distribute to the

State of California.

In addition to that, to further identify myself, I have been founder of the Boys Club movement in San Diego County, where we have a great many Boys Clubs.

I serve on the National Board of the Boys Clubs of America, and in my spare time, in a sense, I am the operator of a department store in the City of San Diego, so I am a businessman, not a lawyer, as you thought.

I have here some information, which I understand was suggested that we might have for your perusal and for your records.

If I may, I would like to suggest that I distribute these to each member of the committee and to your counsel and part of it you might wish to read with me as I read it and in some cases enlarge upon it for your further information.

THE CHAIRMAN: Thank you, Mr. Scott. We will be pleased to receive it.

THE WITNESS MR. SCOTT: On the -- I am not reading from this yet; I have one further word of explanation.

I was at the hearings yesterday, and I think it would be proper to state as a citizen and in my role with Boys Incorporated we were much relieved and encouraged in a sense, and by we, I mean those of us who look toward the use of these funds from -- for charitable purposes, because we have had concern, possibly unjustified, but on the other

hand, possibly not, based upon news story statements, things of that sort. We have had concern as to whether or not these funds would be placed in jeopardy in any way, and we are rather proud of the opportunity to see that they are distributed to charity or for charitable purposes, and I use the word only because that is used here in the Boys Incorporated charter. Many of us do not like the word "charity". We think of it in many more helpful ways than just that.

If I may read here then, rather rapidly, and -- because this is rather a detailed document, but I think that will be very helpful to the members of the committee.

Boys Incorporated of America, or known as Boys Incorporated, is a charitable, non-profit corporation. It is organized under the laws of the State of Delaware under date of June 7, 1954. It was then qualified and obtained a permit to do business in California on July 22, 1954.

The purpose of Boys Inc., as set forth in its Certificate of Incorporation is as follows:

"To build better boys and, hence, better men. To combat juvenile delinquency among boys of all races, creeds or colors between the ages of eight and seventeen."

Parenthetically, may I make this comment: I think the next paragraph is a very interesting one, and is, of course, a true statement.

The charter of Boys Incorporated provides that

no part of the net earnings of the funds or property of the corporation shall ever inure to the benefit of or be paid or distributed to any officer, director or other individual.

May I comment, as I indicated I would on some of these points, please, for your interest. I realize, because of my background with Boys Incorporated, that the very idea of Boys Incorporated to many people, including me in the early days, seems somewhat, oh, unbelievable that men could be of a mind and of a heart to want to take funds of this kind and to make them available for the purposes which are spelled out here.

My own contact with Boys Incorporated began with a meeting, rather unusual meeting, which took place in a solarium of an institution here, at Scripps Institute here, between Mr. Murchison and Mr. J. Edgar Hoover. I did know Mr. Hoover, of course. I did not know Mr. Murchison. We were at the time, each of us -- three of us were patients, if you want to call us that, in this clinic, and between the times of different testing that they gave us, the men and the women sit in a very beautiful solarium, and I was -- We all, of course, introduced ourselves to each other. I was impressed, of course, even at my age, to meet J. Edgar Hoover, and then I met Mr. Murchison. I had heard of him and was much impressed also, but I was more impressed when I began to hear Mr. Hoover, in a sort of a jovial manner, challenging Mr. Murchison about something that was a little

hard for me to follow in the beginning. It had to do with the fact that he was there attending the races, and they were talking about juvenile delinquency, and I do not, of course, remember the words at all, and -- but I do remember the impression that was left in my mind as a citizen interested in these things, as are most of us.

Mr. Hoover, somewhat, I repeat, challenging Mr. Murchison to see if he could take the moneys that came from these race tracks and put them to what he called the purposes of juvenile delinquency. This, I think I can put on the record, at least, if I know it, it was, I suppose, the place in which the idea of Boys Incorporated itself was born, and this possibly adds also to the 'unbelieviality', the fact that this idea could come into being.

My later contact with the Boys Incorporated was when I read in the papers that this idea had become a reality through this means, and that it was proposed that these funds of money, which were large, at least to some of us, were to be used for the idea of building buildings, and that alone was supposed to make good boys out of bad boys.

I then, very quickly, come back to my role with the Boys Clubs of America, and having been into this, just as an interested spectator in a sense in this beginning discussion, I made contact with Mr. Murchison to see if we could not convince this able man that he was wrong in his idea that the use of money alone and buildings, no matter

how lavish they may be and how well equipped they may be, would accomplish the purpose that apparently it spelled out, as I have read to you. I think it's important to tell this committee that we then were able, as interested citizens, to get Mr. Murchison to come out to a Boys Club building, something he had never done before. I think it is important to say this was rather an education to Mr. Murchison. I think Mr. Murchison had no idea that we require in our Boys Club work trained men; they must be trained for their jobs; that the boys govern themselves; that they have to pay a small, it is true no more than a dollar, membership fee, and when they don't have the dollar, they make payments on the time-payment plan.

I mention these things to show you why some of us were interested in this, and why we were concerned with the possibility that these funds we thought were available and would be available for future use might be in jeopardy.

I then was invited, due to these many contacts, and happily accepted a role as a member of the Board of Directors and read, of course, all the material that led to the actual incorporation of this idea, and then sold Mr. Murchison and the other members of the Board at some of the Board meetings on the idea of enlarging the Board to include two other members from this area and to form the California Committee that I mentioned to you in order that we might make the recommendations to them as to how this seventy-five

percent of the funds would be used.

Now, this then is the role that I have been filling and I appreciate your letting me tell this to you; although it seems rather self-centered, I thought it would be of interest to you.

This is the role that we have been carrying out since that time.

Boys Incorporated has -- I am going back now to the actual document itself -- has no capital stock or stockholders. It is governed by the Board of Directors. Boys Incorporated was founded by C. W. Murchison of Dallas, Texas, and the late Sid W. Richardson of Fort Worth, Texas, and they, together with John D. Murchison and Perry R. Bass, composed the first Board of Directors.

This was the way it was when I first knew them.

As you know, Boys Incorporated owns the lease covering the Del Mar race track at Del Mar California, and this was originally granted December 8, 1936, by the 22nd Agricultural District of the State of California to Del Mar Turf Club, a California corporation. The term of such lease, etc., are well known; I will not read that.

The Operating Company is obligated to pay rent to Boys Incorporated under its sublease annually in the amount of \$250,000, as was brought out here yesterday in the hearings, or ninety percent of its net profits from its operation of the track, whichever amount is the greater.

Boys Incorporated received the first rent to which it was entitled, under the sublease and the conveyance from Del Mar Turf Club, in August 1958. I repeat we received our first money to which we were entitled, and I know there will be a question in respect to this, and properly so.

To date, it has received a total of \$1,041,091.57 in rent from the Operating Company.

The By-Laws of Boys Incorporated provide that unless and until the two-thirds of the whole number of the Board of Directors authorize and direct otherwise, seventy-five percent of the funds of the corporation, which are available for use for its charitable purposes, shall be used or expended in the geographical area where such funds originate. The other twenty-five percent may be used or expended for the charitable purpose of Boys Incorporated in any area the Board of Directors determines.

The next part, as you will read, has to do with the formation of the California Committee under the circumstances which I described and I mentioned there were three of us, that is, Mr. Irving E. Friedman and Vincent T. Godfrey. I do know Mr. Friedman is here; whether Mr. Godfrey has come in or not, I do not know. They are highly respected, gentlemen, citizens of this community, perfectly willing to be called do-gooders, as I am.

We are then, which I think would be of interest to you, not only in your official capacity, but as citizens--

I think you would be interested to know that we further convinced the members of the Board of Directors that these funds should be handled on a very businesslike basis. They were in immediate agreement with this, and we suggested that Mr. Aaron H. Fahringer, be hired as our Executive Director. Mr. Fahringer was former director for the nine western states and Hawaii for the Boys Clubs of America. When he came to the time of retirement, those of us, of course, who had known him over the years, immediately sought him out for this job.

We have established our offices; we have provided our forms for application, which we have many many for these funds, because, of course, because of these projected hearings and misunderstandings and unhappy figures that have arisen on the part of potential recipients. The Boys Incorporated has become rather widely known, and so we have, of course, many, many applicants for these funds. We have established also something else that I think would be of interest to you, because this whole thing is rather fantastic; we know that, we know that. As someone has said, the idea is not only fantastic, but that men from Texas should give up money was even more so, but nevertheless, we have even incorporated into our program for the use of these funds that wherever it is possible, we require them to match the funds.

In other words, where we make a grant of say \$50,000, as we did in some instances, to a Boys Club, we told them, "You go and get \$50,000 from other sources for your needs."

These things are not said to impress you. We are not interested in that. It is not necessary, but we want to explain to you how we handle these funds and primarily -- sometimes it has been mixed up.

To date Boys Incorporated has distributed over \$425,000 to organizations actively engaged in serving the Boys Incorporated purpose. Boys Incorporated has in its current file, awaiting action, applications for contributions from thirty-five California organizations.

I wish to repeat that no Director or officer of Boys Incorporated has ever received any salary or other remuneration from Boys Incorporated.

On the back page, if you will turn that with me, please, we have a remuneration which, of course, will lead to proper questions and to questions as to receipts and disbursements of these funds.

If I may, I would like to go down them very hurriedly to get them in.

We have the \$1,041,091.57, which I will reiterate; we had a donation to us of \$10,000 from one of the members of our Board.

We own property in the Sorrento Valley and we sold five and a fraction acres of that property for some \$12,000. We had a cost of making that sale of \$2,627.23, or net of \$9,372.77. We, believe it or not, at one time had no funds to pay some current bills, and we received an

advance from Mr. Sid Richardson, a member of our Board, now passed away. He hasn't gotten his money back of \$2,614.63 so our total income was \$1,063,078.97.

Very hurriedly, may I give you the disbursements? As you know, the purchase price of the Del Mar track lease and the property was \$250,000. Interest on the purchase money note to the Del Mar Turf Club is \$65,560.90, so covering the purchase of the lease and of the property, \$315,560.96.

Our interest expense was \$19,593.88, which covered of course the loan of \$250,000 on the purchase price.

Our legal expense is \$3,023.40. Our accounting expenses, our tax, our San Diego office expense, which I have explained to you, our travel expense, mostly for Mr. Fahringer in making these studies for us, and looking into these requests, our organization expense, and general expenses.

Now, we have then distributed the following moneys so far as a result of the balance that was left for us. We provided to the Devil Pups, Inc., program, which operates at Camp Pendleton under the direction of citizens throughout this State of California, mostly men who were associated with the Marine Corps -- we distributed to them \$151,975.69, a perfectly proper purpose as spelled out in our By-Laws.

The Boys Clubs of San Diego, Incorporated, we provided them \$152,136. Both of these cases, I repeat, had to provide matching amounts.

The Boys Club of Chula Vista, \$10,000.

We provided the United Fund of San Diego some \$10,000, allocated and directed to their boys work agencies.

The Junior Achievement of San Diego, we gave them \$4,086.64. This is the one place we required no matching funds. They are not able to match, have no source of raising funds. We provided equipment.

Variety Boys Club of Southern California; we gave them \$8,750.00.

Los Angeles Times Charities for their Boys work, \$8,500. The Los Angeles Herald Express Benefit Fund, the Los Angeles Examiner Christmas & Relief Fund, allocated to each of their boys work programs, \$8,500; Los Angeles Mirror News Charities, \$8,500 for the same.

Boys Club of Southern California through the Times Charities, \$6,000, and Salesmanship Club Boys Camp of Dallas, under the provision the Board of Directors may expend twenty-five percent other than in the area determined by the Board of Directors, and I repeat, they gave that in one place, to the Salesmanship Boys Club of Dallas, \$50,123.75, totalling \$427,072.08, making our total disbursements \$780,541.28, with a balance in the bank of \$282,537.69.

Now, my rather hurried perusal and reading of these funds were to bring me to the point of the \$282,537.69, and if I may, I would like to state these funds have not been

disbursed for the simple reason that I recommended to the Board of Directors, and our California Committee agreed, and the Board of Directors authorized me to send a letter to the -- some thirty-six organizations that have requested funds, telling them that we had some concern as to whether or not this entire program would continue, primarily caused by, shall we say, misunderstandings as to the purpose of these hearings.

As lay people, we had misunderstandings and misapprehensions and we advised them that we would not wish to disburse the balance of these funds until we were a little surer of our status in respect to where we would go from this point forward.

This then, is the background of my role in Boys Incorporated, and for the record, may I say that I have been very pleased at this opportunity. I have been pleased to have had an opportunity to be a part of something very unusual. I just wish that we could do this with more race tracks. This is my statement, Mr. Chairman.

THE CHAIRMAN: Thank you, Mr. Scott.

I have a question, as you probably anticipate.

The lapse in the time between 1954 and the date of August of '58 when the first grant was received --

THE WITNESS MR. SCOTT: Yes. These are the -- that's during the period of time in which the funds were used in the actual purchase of the track itself, and Mr. Anson, as

was pointed out yesterday, will give you complete detail, documentary detail on that as one of your witnesses.

THE CHAIRMAN: Questions by the committee?

Senator Fisher.

Q BY SENATOR FISHER: That \$1,041,000 was your rental from two meets, the 1958 and 1959 meets?

A BY MR. SCOTT: Yes. This is why we anticipate in the future it should run us around \$500,000 in total, of which seventy-five percent would be available to our California Committee to disburse, and I imagine after this testimony gets in the papers, we will have many more applicants.

SENATOR DONNELLY: Mr. Chairman.

THE CHAIRMAN: Senator Donnelly.

Q BY SENATOR DONNELLY: I would like to ask: This Board of Directors appears to be -- the members appear to be located in Texas, most of them; is this the national organization, or --

A BY MR. SCOTT: Well, as I pointed out, it is organized under the laws of the State of Delaware.

Q I understand that. I note most of the members, as well as the President, seem to reside or come from Texas. Is this the majority -- Is this the national organization, or do you have a separate organization that controls the California funds, or do you turn that over to the Texas operation to operate?

A No. No, seventy-five percent of all of the funds

must be spent in the area from which, shall we say, the people come who attend the races, and we have considered this to be the State of California, and these funds -- the use of these funds are recommended by the California Committee, and may I say that in ninety-nine percent of the cases so far this -- this has been the unanimous action of the Board of Directors.

They are recommended by the California Committee who has the power to allocate them. The actual Board of Directors has the final power, of course.

Q That is the Board?

A That is right, Mr. Murchison, his son, Perry R. Bass, myself, Mr. Buddy Fogelson, who also serves on the National Board of the Boys Clubs of America; Mr. Vincent T. Godfrey, a prominent citizen here; Irving E. Friedman, who is a prominent citizen of San Diego, who has been past president of the Boys Clubs of San Diego; Mr. John Connally, Mr. C. W. Murchison, Jr., obviously the son of Mr. Murchison, Mr. George C. Anson, who is here, and Mr. Howard Jennings.

Q Is this the funds that you receive from the racing at Del Mar; are those the only funds that you receive outside of the matching funds that you speak of?

A The matching funds, of course, would be owned by the recipient organizations. We merely attempt to require them to have that in order to make wider use of these funds, but the answer is yes, this is -- these are the only funds

that we have, excepting the \$10,000 that was given to us by one of the Directors.

Q Did -- When the question of organizing this Board of Directors of this group came up to control the money from horse racing, this happened before the -- before you got the lease on the Del Mar -- or got the Del Mar lease, is that correct, or did it happen afterwards?

A I'm sorry. Do you --

Q In other words, was your organization -- did it come into being before the lease was secured by your group?

A Well, no, I think that in -- I think it would be fair to say, without being too exact, because I don't exactly remember that. I read to you the first Board --

Q Yes, I understand. I know that.

A It would seem to me, as I remember -- As I pointed out to you, I was not a part of it in the beginning. I understand -- I believe that this was simultaneous in a sense; this Board of Directors was formed --

Q What I was trying to find out was whether or not this Board was organized and formed so as to get the funds that were formerly part of the Del Mar Turf Club when they were -- was that the purpose of the Board, to get and distribute those funds? Whatever the purposes were, whether they were laudable or not, was that the reason that they were --

A Well, the men who accepted leader -- membership on the Board of Directors of Boys Incorporated must have been

dedicated to the purpose which is set out here.

Q Did the organization exist before this?

A Oh, no. No, this was --

Q It came into being; this was an idea to expend these funds for this purpose?

A That is right, yes. That is right.

SENATOR DONNELLY: That's all.

THE WITNESS MR. SCOTT: Thank you.

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: That's -- I want to make that last point fairly clear; the first order of business was the receipt of this assignment and grant deed?

A Well, I wasn't there. I was not a part of it. I have merely been a member of this Board for --

Q That's your understanding though; that was the first thing they did was take the assignment and grant deed after they were organized?

A I would assume so. I do not know. I am not trying to be evasive. I do not know.

Q I would like to ask you about the sixty-five thousand some odd hundred dollars shown as interest on the purchase money note to the Del Mar Turf Club. What was the amount of that note, if you know, Mr. Scott?

A No, I do not know. I do not remember, rather.

Q Has that been fully paid off?

A Yes. Yes, and here again, I think Mr. Anson can

give you the full detail on that. Yes. Yes, the answer is it has been paid off.

THE CHAIRMAN: Any further questions?

Mr. Sheets.

Q BY MR. SHEETS: Yes. Do you know why this corporation was organized in Delaware?

A No, I do not.

Q Do you know why eight of the eleven directors are out-of-state directors and that that is from Texas?

A No, I do not know why. I could express an opinion. Quite a number of them are related to Mr. Murchison and Mr. Murchison had a -- In other words, if I were Mr. Murchison, and were attempting to do something that he thought and still thinks, and I agree with him, as is proper in its purpose as this, I think I would like to have my two sons associated with me, and my nephew.

Q Do you know who the stockholders or officers were of the Del Mar Turf Club, Inc., a corporation, at the time the assignment was made to Boys Club of America?

A No, I do not.

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: Mr. Scott, under the By-Laws, it is stated that unless and until two-thirds of the whole number of the Board of Directors authorize and direct otherwise, seventy-five percent of the funds shall be spent in this area?

A Yes.

Q That's correct?

A That is right.

Q Now, with eight of the eleven members being of -- of your Board of Directors being out of state, would eight constitute two-thirds of the Board of Directors?

A Yes. Let's see, two, four, six, eight, eleven -- Yes.

Q So that at any time, this seventy-five percent, which is now dedicated to this area, could be changed by a vote of two-thirds of the Board of Directors, of which more than two-thirds are from out of state; is that correct?

A Technically, you are absolutely correct, sir. I think I can tell you that I believe it would be over the dead body of Mr. Murchison.

Q Well, Mr. Richardson was on the Board too, and he is no longer with us, and so the situation could change at any time, could it not?

A Yes. Technically, you are correct.

Q Now, the statement's in here that no director or officer of Boys Incorporated has ever received any salary or other remuneration from Boys Incorporated?

A Yes.

Q Is Mr. Anson an officer?

A Mr. Anson is the Secretary.

Q Is he an attorney?

A He is. He is here.

Q Has he received any legal fees?

A Not to my knowledge.

Q You have a legal expense listed on your expenses?

A I believe those expenses had to do with the --
the matter of putting together the original corporation.

Q Is Mr. Fahringer an officer?

A Mr. Fahringer is not; he is an employee.

Q How many employees do you have, Mr. Scott?

A We have Mr. Fahringer and he has a Secretary.

Q What is Mr. Fahringer's salary?

A Mr. Fahringer earns \$10,000 per year.

Q You have an item on your expenses as taxes.

What taxes would those be?

A I cannot answer that, sir.

Q You are the Chairman of the Board, Mr. Scott?

A I beg your pardon?

Q Are you the Chairman of the Board?

A No. I am Chairman of the California Committee, sir.

Q Who can answer that?

A I expect Mr. Anson can answer it.

Q I note you have a number of contributions to the
newspaper charities in Los Angeles. Does the San Diego Union
have a newspaper charity?

A I don't know what the San Diego Union-Tribune has.

Q You do --

A I do not know if they have a charity.

Q You have not ascertained whether they do or not?

A No. There would be no reason for me to do so.

Q Why not, sir?

A We do not go out seeking people to apply for these funds. There are plenty of them without that.

Q Oh, you didn't seek the Los Angeles newspapers?

A No, absolutely not.

Q And as a San Diego man, serving on a committee with two other San Diego men, it didn't occur to you that maybe the San Diego Union might have something that would be as worthy as the Los Angeles papers?

A Well, I am -- I don't quite get your question. Would you mind repeating it?

Q I mean, I am just curious to know if it didn't occur to you that maybe the San Diego paper might have a charity similar to those of the Los Angeles papers.

A Well, if they do, they could do just the same as the other newspapers did; they could apply for it.

Q Was any -- Do you know, as Chairman of the California Committee, whether any offer was ever made to the San Diego papers?

A No, I do not, and I -- I am sure it was not.

Q You are sure it was not?

A Well, it certainly was not made through me. There would be no reason to make any offers to anybody.

MR. WATERS: No further questions.

THE CHAIRMAN: Any further questions?

Thank you, Mr. Scott.

THE WITNESS MR. SCOTT: Thank you for your courtesy.

THE CHAIRMAN: Now, we will call Mr. Anson and Mr. Ely, who I understand would like to appear together.

WALTER ELY AND GEROGE C. ANSON

jointly called as witnesses, were examined and testified as follows:

THE WITNESS MR. ELY: If the Senators please, I am only the local attorney for Boys Incorporated in this matter, and I would like to present Mr. Anson as a lawyer from the State of Texas, where I used to practice before I came to Los Angeles, sir.

THE CHAIRMAN: All right.

THE WITNESS MR. ELY: I would also like to voice a mild objection to that comment made about Texas giving away money, because in this instance, these gentlemen are giving away a lot.

THE CHAIRMAN: Thank you, Mr. Ely. Mr. Anson, be seated, please.

THE WITNESS MR. ANSON: Thank you, sir.

Mr. Chairman, Honorable Senators, my name is George Anson. I am an attorney, a member of the firm Jenkins, Anson and Spradley (phonetic), 1201 Main Street, Dallas, Texas.

I have been --

MR. SHEETS: Would you state that over again, the name of the firm?

THE WITNESS MR. ANSON: The name of the firm is Jenkens J-e-n-k-e-n-s, Anson, A-n-s-o-n and Spradley, S-p-r-a-d-l-e-y.

I have been associated...I have been in with the group of lawyers for ten years who represent Mr. Murchison and the Murchison family generally in most of their business dealings and virtually all of their family matters.

I also have been the attorney for Boys Incorporated of America since its inception in June of 1954.

I appreciate the chance to appear before you this morning. I was not on your original list of witnesses. I hope that my appearance won't unduly lengthen this hearing for you gentlemen, but questions have been raised concerning Boys Incorporated, its organization, things that it has done, and I would like to have the opportunity to answer any of those questions.

I believe that I can answer any question relating to the Del Mar race track insofar as it concerns Mr. C. W. Murchison, or any other member of the Murchison family, Mr. Sid Richardson and Boys Incorporated of America, anything that they have had to do with the Del Mar race track. I think that I can answer your questions.

First, before you ask me some questions, I would like to make one or two statements.

First, I would like to state to you categorically and unequivocally that Mr. Murchison and Mr. Richardson have never received any money, anything of value, tangible property, value of any kind, any benefit whatsoever from the Del Mar transaction, or the Del Mar race track, or anything having to do with it.

They have gotten -- Mr. Murchison and Mr. Richardson have gotten other values from that -- from those transactions.

First, ever since my association with Mr. Murchison as one of his attorneys for ten years, I know that he has come to Del Mar and La Jolla, I believe, every summer. He loves the country out here. He loves to be out here. He enjoys the races and despite the irresponsible charges or insinuations during the early days of this Boys Incorporated transaction of a tax dodge, or a gimmick, or a skunk in the woodpile somewhere, despite these criticisms, Mr. Murchison and Mr. Richardson have continued to come out every summer, because they love to be out here, and because, of course, none of those things were true.

They also have received other benefits from this transaction. They have received a warm glow when someone would come along and say a kind word or give them a pat on the back for what they have done here for kids, or tried to do.

Let me say this also: That Boys Incorporated of

America, a charitable corporation, has done nothing in connection with the Del Mar race track that any other charitable corporation in the United States, whether it be the Red Cross or the American Cancer Society, or the Girl Scouts, or whatever it be could not have done.

What was done here could be done with any property interest by any charitable corporation. It just so happens, I suppose, that the idea for this thing occurred to Mr. Murchison, rather than to someone connected with one of these other charitable corporations.

I think the origination of it was during one of the racing seasons out here before 1954. Mr. Murchison was engaged in conversation with Mr. J. Edgar Hoover and Mr. Hoover said -- Mr. Hoover was talking about juvenile delinquency, and either then, or at some subsequent time, it occurred to Mr. Murchison that it could be a wonderful thing if profits from race tracks, not only at Del Mar, but anywhere else that they could be obtained, could be devoted to this problem that faces the country.

Now, Mr. Murchison and Mr. Richardson could have bought the stock of Del Mar Turf Club, which was available. The Hart Block, so-called, I believe constituted working control of the corporation, or at least, it was a large block of stock.

SENATOR FISHER: Which block?

THE WITNESS MR. ANSON: Hart, H-a-r-t; I believe that's

the Alfred and Viola Hart group in, I guess, Beverly Hills.

MR. SHEETS: Mr. Anson, would you make that last statement over again? I didn't hear the last part of it.

THE WITNESS MR ANSON: Yes, sir. What I said was: The stock -- the Hart Block of stock, being available -- assuming it was available, Mr. Murchison and Mr. Richardson could have personally bought that block of stock, you see, just as any other individual could have done.

They chose not to do that. Had they done it and then made the offer at the same price that was paid to the Harts, and made the offer to all of the other stockholders of the Del Mar Turf Club to purchase at the same price, they could have been -- become the owner -- the owners of a majority of the stock of the Del Mar Turf Club.

Now, had they done that as individuals and as investors, and had they left Del Mar Turf Club in existence, it would have continued to operate just as it had done since 1936. It would have, we assume, made a profit, which it had done since 1936 -- I assume. At least, it had the previous few years, and they could have, after corporate income taxes and other taxes, and other expenses, had the profits of this operation as stockholders of the Del Mar Turf Club.

Had they done that, I think it is safe to say, there would have been no eyebrows raised. There would have been no insinuations or charges or criticisms whatsoever.

There had been none from former private owners, or concerning former private owners of the Del Mar Turf Club, for having the benefit of those profits and had they chosen to do that, and had taken those profits off, they could have done what they pleased with them, and I assume no -- there would have been no problem, because owners in this country still do that, and they own other business interests and have the benefit of those profits and there have been no criticisms.

Now, instead of doing that, they decided they didn't want to own the Del Mar race track, or have the benefit of the profits of that operation; they wanted to devote those profits to this charitable purpose of Boys Incorporated of America, so the plan was submitted to counsel and worked out whereby the track was sub-leased to the Operating Company, about which you have already heard, and then, subject to that sub-lease, the Del Mar Turf Club sold the basic lease to Boys Incorporated of America.

Now, Mr. Murchison --

SENATOR FISHER: Mr. Chairman.

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: For what consideration?

A BY MR. ANSON: For the consideration of \$250,000.

SENATOR FISHER: That's all.

THE WITNESS MR. ANSON: Now, in that transaction -- in that conveyance, if you will look at one of your exhibits to your supplemental report --

SENATOR FISHER: Exhibit No. 9.

THE WITNESS MR. ANSON: Exhibit 9, the Assignment and Grant Deed from Del Mar Turf Club to Boys Incorporated of America, you will notice that the -- let me find the consideration -- in the first paragraph, for and in consideration of the sum of \$250,000, Turf Club assigned and conveyed to Boys Incorporated of America the following properties, and one was the original lease from the 22nd District to the Del Mar Turf Club, as it had, up to that date, been amended.

SENATOR FISHER: Is there any other consideration?

THE WITNESS MR. ANSON: Now, Senator Fisher, if you will notice on page 74, the middle paragraph, "It is further understood and agreed, and as part of the consideration for the execution of this Assignment and Grant Deed, Del Mar Turf Club hereby excepts and reserves to itself, its successors and assigns, the rentals to accrue and to be derived from and under the aforesaid Sub-Franchise Agreement, and therein referred to as 'additional rental' "-- that's the sub-lease we have referred to -- "for a maximum period of ten years..." or until Del Mar Turf Club...receives from this reserve rental the full net sum of \$1,780,000, plus an amount equal to interest at the rate of six percent per annum on the declining balance of said sum, whichever occurs first.

Q BY SENATOR FISHER: That's six percent plus the six percent in the preceding paragraph, running on the unpaid balance of the \$250,000?

A Yes, sir.

Q Were the two of those -- two of those interest rates the genesis of the \$65,560 shown on -- as interest on the purchase money note of the Del Mar Turf Club?

A The \$65,000 figure on our statement of receipts and disbursements is interest paid on the \$245,000 note only.

Q That's the only --

A See, that's the only obligation Boys Incorporated had, so when we list our disbursements, we listed only what we paid, and we paid interest on the -- on the \$245,000 note, and the total interest expense on that note was \$65,000.

Q Has the \$1,780,000 been paid?

A Yes, sir, paid in full with the six percent interest.

Q And what has the six percent interest amounted to on that?

A On that? I am not sure I have that actual figure here. I say again I didn't expect to be a witness, and --

THE WITNESS MR. ELY: Mr. Chairman, while Mr. Anson is looking through his file --

THE CHAIRMAN: Yes, Mr. Ely.

THE WITNESS MR. ELY: May I make just one correction?

Mr. Anson inadvertently referred to a -- to the supplement here a moment ago as the report of the committee, and I think the record is now quite clear, because of Senator Donnelly pointing it out yesterday, that while the front page calls it "Report of the Committee" that it

actually is just a report of one, or perhaps more, of the Staff of the committee. I am glad Senator Donnelly brought that out.

THE CHAIRMAN: Thank you, Mr. Ely.

As a matter of fact, I think the front cover correctly reflects the name of it. It's a supplement to the examination of the 22nd District.

THE WITNESS MR. ELY: Yes.

THE WITNESS MR. ANSON: Senator Fisher, I don't have the exact figures on that. I have them in the office and those payments were audited by Peat, Marwick, Mitchell & Co., a national firm of Certified Public Accountants.

Q BY SENATOR FISHER: That's provided for in the Del Mar Turf Club - Operating Company Sub-Franchise Agreement?

A Yes, sir. Yes, sir.

Q Can you give me just from recollection approximately what that has been?

A Well, it took four years to pay out that million seven hundred and eighty thousand dollars.

Q So it would be somewhere in the neighborhood of \$120,000?

A I sure hate to guess. It could have been, I guess, \$200,000. I will be glad to furnish you a statement of Peat, Marwick, Mitchell's form of the exact payments that were made on that to principal and interest by letter

later if you wish.

Q At your convenience, if you could send it to the committee --

A Yes.

Q -- it would be appreciated. So that a total has been -- since July 26, 1954, a total of \$250,000, plus \$1,780,000, plus the \$65,000 interest on the purchase money note and somewhere between one hundred twenty and two hundred thousand dollars on interest, or an amount which is equal to the interest on the one million seven hundred odd thousand, -- so that somewhere in the neighborhood of two and a quarter million dollars has been returned, as a result of this Assignment and Grant Deed, into the treasury of Del Mar Turf Club, the original --

A The old Del Mar Turf Club, yes.

Q The original lessee?

A Yes, sir.

Q Has that money been distributed?

A Yes, sir.

Q Were there dissenting stockholders in the transaction when Del Mar Turf Club sought to divest itself of all its interest in this major property?

A I believe there were no dissenters. If there were any dissenters, they didn't perfect their dissenter's rights, I believe.

Q Do you know whether or not the -- they have paid

their last liquidating dividend, Del Mar Turf Club?

A I believe there's a -- I believe there's possibly one more liquidating dividend to be paid to those stockholders in dissolution, and --

Q And can you tell us what the difference was, if it was substantial, between the two and a quarter million dollars or two and a half million dollars that was received under this Assignment and Grant Deed, and the book value of the outstanding stock of Del Mar Turf Club?

A No, sir. I can't recall the book value. I do know that the -- the face amount of -- of what they received, that is, before interest, was approximately equal to the market value at that time of the outstanding stock. I understand there was a small market in the stock, and that it was at approximately four hundred dollars a share, and there were seven thousand shares issued and outstanding, and that this total figure they received was approximately that amount, about the market value; I don't know what the book value was.

Q Can you tell me, at the time of this transaction, who the Board of Directors was of Del Mar Turf Club?

A Yes, sir.

At the time of this transaction, the Board of Directors of Del Mar Turf Club was General Holland M. Smith, Louis B. Mayer, Rex Ellsworth, Mrs. Ann Peppers, Sam Dunham, Walter Marty, Gordon Guiberson, Fritz Hawn, W. E. Craven.

The officers were General Smith, President; Louis B. Mayer, Vice-President; W. E. Craven, Secretary-Treasurer.

THE CHAIRMAN: At this time, we will take a five minute break for the reporters.

(Whereupon a short recess was taken, after which the following proceedings were had:)

THE CHAIRMAN: All right, the committee will be in order.

Were you making a statement when I called the recess, Mr. Anson?

THE WITNESS MR. ANSON: No, I believe I was answering a question.

Q BY SENATOR FISHER: You had just given us who the Board of Directors were?

A That's correct.

Q Can you tell us who the major stockholders of Del Mar Turf Club were?

A Yes, sir. The major stockholder was Mr. Leland M. Kaiser of San Francisco. He owned -- he bought the Hart block, and the Harts required in their sale of their stock that the same offer be made to all of the other stockholders of Del Mar Turf Club.

He made that offer and acquired, including the Hart stock, approximately sixty percent of the stock, which gave him complete control of the corporation.

Q And what other stockholders held more than five percent?

A I know of none, sir. The other stock was held among approximately three hundred stockholders, which wouldn't -- if you work that out, which wouldn't give any of them very much, I suppose.

Q Yes. Can you tell us who the Board of Directors of Operating Company were at that time?

A At that time? I believe that was in the record yesterday. I will give you my best memory of it.

Q I think maybe it was put in the record, so let me withdraw that and ask you another question. Can you tell me when Operating Company was organized, approximately?

A Yes, sir. It was organized in early July of 1954, just prior to the sub-lease from Del Mar Turf Club to Operating Company. It was organized for the purpose of taking this sub-lease.

Q And who were the organizers of that?

A The organizers? They were about -- the same group as the officers and directors. They were Rex Ellsworth, -- Well, there was Mr. W. R. Black, I believe was his initials, Mr. Black, Mrs. Peppers --

Q Roughly the same group as the directors that were --

A Yes, sir.

Q Testified to about yesterday?

A Yes, sir.

Q Did Mr. Murchison have any substantial block of stock in either of those corporations?

A He had no stock in either of the corporations.

Q In either the Del Mar Turf Club or the Operating Company?

A None.

Q All right.

A I might say this, just volunteer this; it may be something that is of interest, and it may help explain some of the early misunderstanding of the transaction.

Mr. Murchison's and Mr. Richardson's sole connection with the Del Mar 1954 transaction was -- were two; first, as founders and directors of Boys Incorporated and secondly, as helping Mr. Kaiser finance the acquisition of the stock that he bought when he became the controlling stockholder of Del Mar Turf Club. In other words, Mr. Kaiser, --

Q He helped Mr. Kaiser purchase the stock, but it was Mr. Kaiser's stock?

A Yes, sir. Mr. Kaiser borrowed the money from banks to buy the stock and Mr. Murchison gave certain guarantees of those obligations, Mr. Murchison and Mr. Richardson.

Now, that -- apparently through that -- because of that financing maybe, or because of his assistance to Mr. Kaiser in that financing, maybe, there was some misunderstanding that Mr. Murchison owned the stock, or had acquired the stock.

Q Was any of the stock pledged to Mr. Murchison or

Mr. Richardson?

A No, sir.

Q Or anybody holding for their benefit?

A No, sir.

Q So that they --

A They were guarantors only. Now, had they had to make good on their obligation, then, of course, -- Now, what I mean, by subrogation, they would have become the owners of that security.

Q But it was not placed in escrow or anything?

A Sir?

Q Was it placed in escrow until it was paid off?

A No, it was -- it was pledged to the bank as collateral to Mr. Kaiser's notes.

Q Mr. Kaiser has no interest in Operating Company so far as you know?

A None, sir.

THE CHAIRMAN: Questions by the Committee?

Mr. Sheets.

Q BY MR. SHEETS: Had you finished your statement?

A I believe so.

Q Are you able to tell us the total price that was paid by the purchasers of the stock, of which Leland Kaiser was one for sixty percent of it, which was purchased prior to these transactions with Boys Incorporated of America?

A The only stock that was purchased prior to these

transactions that I know of was purchased by Mr. Kaiser. He paid four hundred dollars a share, plus, as to that part he bought in the open market, whatever the brokerage fee on it was.

Q Would my arithmetic be correct if I said he paid for the sixty percent \$280,000?

A I suppose, sir. I -- it would be four hundred dollars per share times approximately four thousand or forty-five hundred shares.

That would be a million eight hundred thousand, wouldn't it, Mr. Sheets?

Q That he paid for his sixty percent?

A Yes, sir.

Q A million eight hundred thousand?

A Well, approximately, yes.

Q And for the total of seven thousand shares, it would be two million eight hundred thousand, wouldn't it, at that price, if the price were still constant at four hundred dollars a share?

A Yes, sir, I suppose. Yes, that's right.

Q As I understand you, after effecting that purchase and obtaining control, then, the Operating Company agreement was entered into by the Turf Club, Incorporated, with the Operating Company?

A Yes, sir.

Q Immediately?

A Fairly soon.

Q And was that -- and then also at that time was worked out the new or the 1955 Extension Agreement between the District and the Del Mar, Inc.?

A No, sir, there has been no 1955 extension that I know of. There was a 1953 extension.

Q Or the 1953 extension was worked out?

A Well, you see that preceded any of these transactions by at least a year. The 1954 transaction took the situation as it existed at that time.

Q Well, do you understand that at the time that Mr. Kaiser and the others -- Mr. Kaiser made the purchase of the stock, the controlling interest in Del Mar, Inc., that at that time Del Mar Inc., already held an extension of its lease or franchise to 1969?

A Yes.

Q And very shortly after the transaction by which the Operating Company came into existence through its incorporation and taking of the Operating agreement that we have spoken of here --

A Yes, sir.

Q In the hearing -- it was then the sale was made by the Turf Club to Boys Incorporated of America of all of the assets of Del Mar, Inc.?

A Immediately after the sub-lease to the Operating Company, Del Mar Turf Club, by this Assignment and Grant

Deed conveyed its lease -- its district lease and certain other assets to Boys Incorporated. It did not convey current assets, cash, whatever securities it had. It had some assets that it did not sell to Boys Incorporated, but it sold the District lease and some real property that was -- that it owned down in Sorrento Valley.

Q Did it make the conveyance with the idea in mind of liquidating Del Mar Inc., within the year period?

A Yes, sir.

Q Did it liquidate within the year period?

A I -- Well, now, your -- you ask me to have in mind liquidating within the year period; it had in mind going into immediate liquidation. Now, how long that liquidation might take to completely be consummated, I don't know, and I don't know that they considered it.

Q Well, did you handle any of it?

A Did I handle the Del Mar liquidation?

Q Yes.

A No, sir.

Q So that -- are you familiar with the reasons why it acted?

A Why it liquidated?

Q Why it acted, liquidated and endeavored to dissolve?

A Yes, sir. It had no -- It had no other business to engage in that I know of after it sold the Del Mar track

lease.

Q Well, normally, if -- under those circumstances, it would endeavor to liquidate and dissolve it within one year, would it not --

A Well, it would --

Q Under California law to obtain a tax advantage, as well as under the revenue statutes?

A I am not a California lawyer, and I don't know what the California tax aspect of it would be.

Q But you know that the Federal --

A I know that subsequent to 19 -- 1954 -- the 1954 Revenue Code provides for a liquidation within one year; I don't know whether that code section was in effect in July of 1954. I don't believe it was.

Q But you mean to say they weren't trying to meet the Internal Revenue Code Section, which required liquidation within one year to obtain the capital gains benefit?

A I don't know.

Q At any rate, they didn't dissolve, I guess, and they haven't yet; is that correct?

A No, they have not yet dissolved, the primary reason being that they held a lease on some land, which I understand is owned by the Ed Fletcher Company, and that lease also was conveyed by Turf Club to Boys Incorporated, and the Ed Fletcher Company didn't consent to that assignment, and brought some kind of an action to prevent Turf

Club from dissolving until certain conditions, which it wanted met, were satisfied.

I think that's primarily the reason they haven't filed their final certificate of dissolution is that litigation is pending.

Q And there's an injunction restraining them from proceeding?

A I don't know that there is an injunction. There is an action; I don't know the exact nature of that.

Q Did Mr. --

A Mr. Oakes, I guess is perfectly familiar with that litigation. Now, that has nothing to do with us, except that we -- we own that lease, the Ed Fletcher lease, but we don't -- we are not involved. Well, let's see, I am not sure whether we are involved in the litigation or not, except they didn't -- the Ed Fletcher Company didn't want the lease assigned to us; they didn't want Del Mar Turf Club going out of existence with the obligations under that lease somehow being secured to them by some other method than the mere assignment of it; do you see?

Q Did Mr. Leland Kaiser at any time in this transaction have any agreements, oral or written, with reference to any interest by which -- any interest held by him belonged to any other person, so far as you know?

A No, sir.

Q Do you know whether he was the agent or represent-

ative of any other person in this transaction -- in these transactions or any of them?

A I am sure he was not.

Q Are you able to state what, if any, profit Mr. Leland Kaiser took out of the transaction by which the lease and deeds went to the Boys Incorporated and the dissolution and liquidation of the Del Mar, Inc., occurred on the stock which he held?

A After taxes, I have an idea that he has probably made fifty, sixty thousand dollars out of it.

Q But you don't have the figures yourself, or did you handle that for him?

A No, I -- I have not handled his -- his work, or his tax work, or anything of that nature, his legal work.

Q You did the incorporation work for Boys Incorporated of America?

A That's true.

Q Would you explain why you used a Delaware Corporation form?

A Well, yes, sir. At that time, Texas had never had a non-profit corporation act, and the business corporation act, which it had had was a -- from a technical legal standpoint difficult to work with. I might say this: Texas had a business corporation act which required that a corporation could have only one purpose in the exact language of one of the purpose clauses of that statute, and business corpora-

tions often found it difficult to -- difficult to fit their type of business into one of those statutory purpose clauses. For that reason, for many years, we had been organizing corporations that we organized, as lawyers, in Delaware.

The Delaware corporate laws are well known and are good corporate laws. Since we had always used Delaware corporate laws for incorporating business corporations, it was a -- it was a more or less automatic reaction on our part to go to Delaware to form this non-profit corporation.

We knew that -- we had never had any experience with California corporate laws. We did know something about Delaware corporate laws.

Q Did you have any other purpose than the ones you have stated in mind?

A No, sir.

Q Such as obtaining diversity of citizenship for tax advantages?

A No, sir.

Q Do you know of any money or property, which Mr. Murchison or Mr. Richardson put into the-- into these transactions, which we are speaking of, in connection with Boys Incorporated of America?

A Put money into Boys Incorporated?

Q Yes.

A Yes, sir.

Q What? That's my question.

A They both made advances to the corporation in its early days for the first -- because of the reserve rent by the old Del Mar Turf Club, Boys Incorporated could look forward to no funds whatsoever from the Del Mar operation until those reserve rents were paid out, and as you know, those reserve rents were -- were reserved for a maximum of ten years, or until a certain amount of money was received.

Based on prior operating history, it was anticipated that that would take approximately four or five years to pay out those reserve rents.

Well, in that interim, Boys Incorporated would have no income whatsoever from the Del Mar race track. In the meantime, it had constant requests, applications for funds from these organizations that are serving the same purpose, the Boys Club of San Diego and the Devil Pups and so forth. Mr. Murchison and Mr. Richardson advanced funds to Boys Incorporated, which it in turn made grants to these organizations.

Q In the approximate sums of how much total?

A It all -- let me -- let me say this also: The corporation also, by virtue of guarantees that Mr. Murchison and Mr. Richardson made -- the corporation also borrowed money from banks, which it used for the same purpose, that is, to distribute to these organizations that were pressing for funds. The approximate amount of advances, direct and

through guarantees was \$225,000.

Q How much money did they actually put up?

A They put up \$10,000 in actual contributions, and then by way of loans and advances, about \$225,000.

Q I mean, by way of loans instead of -- I don't mean guarantees; I don't mean that at all. I mean, how much did they put up in the way of advances?

A Oh, let me see. They advanced a hundred thousand dollars, I would guess, a hundred and fifty thousand dollars.

Q Have all those moneys been paid back?

A Yes, sir.

Q All except \$10,000?

A Well, the ten thousand never will be paid back. That was a donation. The only advance that has not been repaid is this twenty-six hundred dollar item.

Q Which is an obligation which will be paid back?

A Yes, sir. I am sure it will. It's probably been an oversight.

Q So that actually, neither Mr. Murchison or Mr. Richardson put in any moneys, really, excepting maybe what you said of \$10,000?

A That's correct, sir.

Q Have they taken out any money of the transactions?

A None except the repayment of their loans.

Q That's the loans that you just mentioned?

A Yes, sir.

MR. SHEETS: I think that's all. Thank you.

SENATOR FISHER: They have --

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: They have made -- neither of them have received anything by way of distribution from the Del Mar Turf Club?

A No, sir.

Q As a dissolving corporation? I would like to refer to Exhibit No. 8 in the same pamphlet and refer you particularly to page 67, and ask you first, Mr. Anson, if this Sub-Franchise Agreement was drawn by you?

A Yes, sir.

Q I admire the document.

A Thank you.

Q It's the only lease in all these years that seems to really get down to things.

Let me ask you in particular about the second sentence in paragraph 9, referring to: "If the use of the Premises contemplated hereunder should at any time during the term hereof be prohibited by law or ordinance or other governmental regulation or prevented by injunction, or if there be any eviction by title paramount, this Agreement shall not be thereby terminated," and so forth.

A Yes, sir.

Q Was it your intention by that to require the Operating Company in any event to make the payments by way

of rental, at least, the minimum rental provided for in this agreement?

A That was my intent. Whether it is completely effective, under California law, I can't -- I can't tell you the answer, but that was certainly my intent that the Operating Company would continue to be obligated for the full amount of the rent for the full term of the sub-lease, regardless of what happened.

Q So that insofar as Operating Company is able, even though it should develop that the -- that the basic lease is invalid, insofar as Operating Company is able, they will be required to continue, or at least, you anticipate it under the terms of this document -- they will continue to receive rental from Operating Company?

A Now, let me say this: That at the time we wrote this language, we had no intimation of the -- of any question of the validity of this lease.

Q You were just being cautious?

A No, sir. It was -- one of the things that was definitely in my mind was we had just been through the Korean conflict, and, of course, I was also aware that during the World War II years, there were three years when no racing was held, that it -- it's certainly a possibility that we could get into some similar situation, so that for an interim there might be no racing; that was the primary thing I had in mind, that if for some period there should

be no racing, because of some public emergency or state of war, or something else, nevertheless Operating Company, during that interim, would be obligated insofar as I am able to provide here, to pay that rent.

Now, whether that would have been enforceable under California law by reason of some doctrine of legal impossibility or something, I didn't know the answer, but I went as far as I know how to try to make it --

Q To eliminate that possibility of not being caught off --

A That's correct, and you will notice in another place, Senator Fisher, having that same point in mind, I provided in this lease that there could be no dividend or distributions to Operating Company stockholders --

Q Which would draw down its earned surplus?

A -- until they had accumulated an amount that would give them at least one year to pay us rent, if such an emergency should arise.

Q Like I said before, Mr. Anson, I admire this lease, and I wish really all of them had been drawn up as carefully.

Let me ask you if you have done any research into this question since this matter has come to public attention?

A The question of the validity?

Q Of the enforceability of paragraph 9?

A No, sir, I have not.

Q Can you tell me what the reason was, if any, that the Del Mar Turf Club, rather than assigning and granting its entire lease, granted only ninety percent of it in effect to Boys Incorporated; was there any reason why -- why it could not have gone the full distance, instead of ninety percent of the way down the road?

A No, sir. Now, if I may correct you, sir, Del Mar Turf Club -- the ninety percent is in the sub-lease. So far as Del Mar Turf Club's grant to Boys Incorporated, that is the full -- that is of the full lease; that's the lease.

Q Well, but the same day you granted the full lease, you carved out this ten percent and put the operation into a separate entity?

A No, sir, that was done previously.

Q But it was the same day, as I understand it?

A Well, but it was done by a completely separate instrument, and with a completely separate party, don't you see, Del Mar --

Q Well, I understand that, but if I understood your earlier testimony, this whole plan was conceived by your principal?

A Yes, sir.

Q Your client? And I wondered if it had been revealed to you why he took this way of separating the operation out from the --

A Yes, sir. Yes, sir.

Q -- the holding, rather than just granting an Assignment and Grant Deed of the entire interest of Del Mar Turf Club, which could have been done, I presume, just as easily, by reserving a rental for an additional period of years?

A Yes, sir. Yes, sir, a charitable corporation, under the Internal Revenue laws, cannot itself operate a business. If it does, that is called unrelated business income, and is taxable. That applies to any charitable corporation.

Q That's in the situation where the income does not come from the operation of the charity itself; it would come from an independent source?

A Yes, sir. Now, a charity is permitted -- any charitable corporation is permitted to rent property that it owns to be operated by someone else. The business operation is done by somebody other than the charity, and all it receives is rent.

Q And that income, either by way of rent, or by way of dividend --

A Yes, sir.

Q -- is tax free as far as income tax is concerned?

A That's correct. All charitable --

Q But it would not have been in the other set of circumstances?

A All charitable income -- all income of charitable

organizations, other than unrelated business income, which we have mentioned, is -- is not taxable under the present laws of the United States, and I think under the tax laws of the State of California. Now, I --

Q You are correct, but I just wanted the record to show it, to make it a matter of public information.

A There apparently are people who don't agree with that, that corporations ought to be taxed -- charitable corporations ought to be taxed, or that if there is going to be any charitable work done, there are even people in and out of Government, and in Texas as well as elsewhere, that think if there is going to be any public welfare done, it ought to be done by the State.

Q Well, aside from the philosophy of the thing, the law does permit the receipt of rent or dividends from an unrelated business to a charitable corporation, and they pay no income tax on that, and by the device of putting the operation in a separate entity, in other words, it was contemplated that no income tax would be paid by the -- by Boys Incorporated under its rights under the Assignment and Grant Deed?

A That's correct.

Q And that if they had been given the entire operation, and had been put in the position of operating the track, they would have paid income tax on it?

A If Del Mar Turf Club had assigned -- without

previously sub-leasing the property, if Del Mar Turf Club had assigned the lease -- the District lease to Boys Incorporated and had Boys Incorporated then gone out and operated the race track, the income would have been taxable, yes, sir.

Q And because of the ninety percent of the net profits payable by Operating Company to Boys Incorporated, by virtue of that, Operating Company is not required to pay income tax on that portion, because it is expensed out as rent?

A That's correct.

Q So that it is -- so that of the entire income from the operation of the track itself, only the ten percent which -- which eventually we presume winds up in the pockets of some shareholder, except as to that, all the rest of the income is tax free?

A That's correct.

SENATOR FISHER: I have no further questions.

THE CHAIRMAN: Further questions? Mr. Waters.

Q BY MR. WATERS: I have a couple of questions, Mr. Chairman.

Mr. Anson, you submitted to the Committee this document as an exhibit?

A Yes, sir.

Q On the financial -- let me ask you first, are any of the persons listed on the front cover page, inside, as Board of Directors -- were any of those persons stockholders

in Del Mar Turf Club at the time of the acquisition?

A No, sir.

Q None of them?

A Were any of these directors stockholders then in Del Mar Turf Club?

Q Yes, sir.

A No, sir.

Q Were any of the persons whom you named as Board of Directors of the Boys Incorporated stockholders in Del Mar Turf Club?

Oh, excuse me, that you named as directors -- let's clear that up.

You provided us with a list of the Board of Directors in answer to a question?

A Yes, sir, those were --

Q That was the Board of Directors of what corporation?

A Del Mar Turf Club.

Q And some of those were stockholders in Del Mar Turf Club at the time of acquisition?

A Let me look at my list. So far as I know and believe, none of these directors of Del Mar Turf Club, whose names I furnished you earlier, were stockholders of Del Mar Turf Club.

Q They are -- some of those are stockholders in Operating Company today?

A Yes, sir, so I understand, yes, sir.

Q Now, the Ed -- Did I understand you to say the Ed Fletcher Company did not sign this agreement of the -- called the Sub-Franchise Agreement or the Assignment and Grant Deed Agreement?

A That's correct.

SENATOR DONNELLY: I think it's "consent"; they did not consent to it?

THE WITNESS MR. ANSON: That's correct, sir. It had a place on the bottom for them to consent, and they didn't consent.

Q BY MR. WATERS: What is the \$250,000 for that was paid under the terms of the agreement for the assignment?

A Under the Assignment and Grant Deed?

Q Yes.

A What was the \$250,000 for?

Q Yes, sir.

A It was for the residual interest in the Del Mar Turf Club 22nd District lease.

Q To whom was that paid?

A It went to Del Mar Turf Club.

Q Was there not a piece of separate property included in this transaction?

A Yes, sir.

Q Could you tell us what that property was?

A That's about a hundred and thirty-eight odd acres in Sorrento Valley.

Q Who owned that?

A Del Mar Turf Club owned it.

Q Do you know what they paid for it?

A No, sir, I don't.

Q Do you know a Mr. McGowan of Rancho Santa Fe?

A No, sir.

Q Do you know of him?

A I don't believe I have ever heard of him.

Q Now, the -- the financial statement shows receipts of rent of \$1,041,000?

A Yes, sir.

Q That's for two years?

A Yes, sir.

Q 1958 and 1959?

A Yes, sir.

Q Do you know what the rent was that was paid to the State through the 22nd District for rent for those premises for that two-year period?

A Not just offhand, sir. I have heard yesterday that in 1959, \$391,000 was paid.

Q Do you know how much was paid in 1958?

A No, sir, I don't. I assume it was approximately the same amount.

Q Was it more or less?

A I don't know, sir.

Q So that the rent paid to the State and the District

that furnishes the property, the premises and put up the money for the premises, was less than the rent paid to Boys Incorporated; is that correct?

A It certainly appears to be correct.

Yes, there is one thing we want to say about that. We -- the situation -- the rent paid to the 22nd District was an existing situation before we ever came into the picture. They had ^atwelve and a half percent lease, twelve and a half percent of the track's share of the handle when the sub-lease was made, and it was based on -- it was based on net profits. There's -- certainly seems a probability with rising costs and continued inflation that a twelve and a half percent of handle could be more than -- can become more than a ninety percent of net profits, because costs are continually going up.

They have gone up every year that we have had anything to do with this thing. They are continually going up. We anticipate at least \$50,000 a year more in just direct labor costs per year from now on, and many other costs. All of our costs are going up.

Now, our -- the lease that we receive rent under is a net profit lease; over the balance of the term of the lease, it certainly seems conceivable to me that the District will receive more than we will .

Q All right, Mr. Anson, but your rent includes sharing in the profit of all of the revenue-producing

activities at -- that are conducted at the race track?

A The net profits, yes, sir.

Q From all the activities, from parking, admissions, food and beverage, etc.?

A From all income, from whatever source, from the Operating Company.

Q Yes, sir, and the fact is that Boys Incorporated put up \$500,000 and that's all; is that not correct?

A Cash money.

Q For this sub-lease, is that right?

A Cash money; that's right.

Q And the rest of the moneys, which have been paid, have been derived from rentals?

A That's correct, sir.

Q May I ask you, referring to the financial statement, what the item of taxes constitutes?

A Yes, sir, those are real estate taxes on the Sorrento Valley property.

Q May I ask you what the interest expense item of \$19,000 constitutes?

A That is interest on moneys that were borrowed by Boys Incorporated during the first four years that it had no income from banks, which it, in turn, distributed to these organizations.

Q Was it -- where did the money come from that paid off the stockholders of Del Mar Turf Club?

A Let me see if I understand your question now.

Q When the stock was acquired from Mr. Kaiser?

A No stock was acquired from Mr. Kaiser, Mr. Waters. Mr. Kaiser acquired stock from Hart, from Mr. Hart or his foundation, and his family and others.

Q All right. Then, is -- well, the stockholders of Del Mar Turf Club were paid off in some manner?

A The stockholders of Del Mar Turf Club in liquidation received all of the assets of Del Mar Turf Club.

MR. SHEETS: Except for one closing dividend.

THE WITNESS MR. ANSON: Sir?

MR. SHEETS: Except for one closing dividend?

THE WITNESS MR. ANSON: Yes. I understand there is an item that hasn't yet been distributed.

Q BY MR. WATERS: Well, were the stockholders paid off at that time or did they wait for the money accruing to Boys Incorporated through rentals?

A Some of the stockholders of Del Mar Turf Club sold their stock to Mr. Kaiser; other stockholders of Del Mar Turf Club stayed in the corporation with Mr. Kaiser and received the assets in dissolution, among which was -- were these rents.

Q So they were not immediately paid off?

A That's right.

Q But they have been paid off as the money came in through rents?

A Yes, sir.

Q Were any of them paid off immediately?

A Yes, sir.

Q And where did that money come from?

A The stockholders of Del Mar Turf Club, including Mr. Kaiser, assigned assets, which were not easily distributable in kind, like this reserve rental right and the note of Boys Incorporated. Those, it seems, were not easily distributable in kind. The stockholders, through the corporation of Del Mar Turf Club, conveyed those assets to a trustee, the Security Trust and Savings Bank, to collect those assets on their behalf. Those stockholders turned in their stock, got their other assets, the cash, and other things that were in the corporation, turned in their stock to the Del Mar Turf Club trust, which was administered by Security, and received trust certificates of beneficial interest, which evidenced their ownership in these reserve rents, and the Boys Incorporated note, so there was then an offer made to anyone who wanted to sell his certificate of beneficial interest, who would rather sell at that time than hold the certificate and receive the six percent interest -- an offer was made to those stockholders to sell their -- who might want to sell their certificates of beneficial interest; and certain of them sold.

Now, they received all of their money at that time. They were paid off at that time. Others stayed in for the

duration and received the six percent -- received the same amount, plus the six percent.

Q They were paid through loans that -- where did the money come to pay them?

A Mr. Kaiser borrowed the money.

Q From a bank?

A From a bank, yes, sir.

Q And Mr. Murchison underwrote the notes?

A Mr. Murchison guaranteed -- Mr. Murchison and Mr. Richardson.

Q Did Mr. Murchison put any money into the transaction?

A None but this \$10,000.

Q You mean in the transaction of acquiring it?

A No, sir.

Q Mr. Murchison put up the \$10,000 or Mr. Richardson?

A I think they put it up half and half.

SENATOR COLLIER: Mr. Chairman, may I ask a question?

THE CHAIRMAN: Senator Collier.

Q BY SENATOR COLLIER: With reference to this organization of this Boys Incorporated of America, I wanted to ask two or three questions of you, Mr. Anson.

Was Mr. Murchison interested in California prior to '54?

A Was he interested in California?

Q In California, yes, prior to June 7, 1954?

A Yes, I think he had some business interests in California.

Q He had been coming to California for a great many years prior to that time?

A I believe so, yes, sir.

Q Had he been coming to this area prior to that time?

A Yes, sir, I think he came out every --

Q Now, the lease, I see, is dated December the 8th, 1936?

A Yes, sir, that is correct.

Q At the time that Boys Incorporated of America took it over and Mr. Murchison, did you examine that lease?

A Yes, sir, I believe I did.

Q And in your opinion, to your client, did you believe that to be a valid lease?

A Certainly appeared to be, yes, sir.

Q Yes, and do you still believe it to be a valid lease?

A Yes, I do.

Q That's the only questions I have.

THE CHAIRMAN: Further questions?

Mr. Ely.

THE WITNESS MR. ELY: I think there is one question Mr. Waters asked of a previous witness about legal fees

charged by Mr. Anson. I would just like to say I am advised, and I think Mr. Anson can verify it, that his firm has never rendered a bill for legal services in the interest of helping to further the wishes of Mr. Murchison and Mr. Richardson to promote this charitable enterprise.

THE WITNESS MR. ANSON: That is true.

THE WITNESS MR. ELY: That's true, is it not?

THE WITNESS MR. ANSON: That is true. Our firm has never rendered an invoice for legal services to Boys Incorporated of America.

THE CHAIRMAN: Anything further?

Thank you, Mr. Ely and you Mr. Anson, for clarifying the position of Boys Incorporated.

Mr. Thomas Hamilton.

THOMAS M. HAMILTON,

called as a witness, was examined and testified as follows:

THE CHAIRMAN: All right, Mr. Hamilton, you may proceed.

THE WITNESS MR. HAMILTON: I am Thomas M. Hamilton, counsel for the Del Mar Caterers. Mr. William Dunham, who who is the general partner of Del Mar Caterers, a limited partnership, had received a letter from Senator Arnold, requesting him to be here with certain of the limited partners and bring certain documents.

My office was informed yesterday by Dr. Fred V.

Cerini of Hollywood that Mr. William Dunham had suffered a small stroke and is in the Hollywood Presbyterian Hospital and the doctor informed my office that he would keep him in the hospital for ten days to two weeks.

MR. SHEETS: Who is the doctor?

THE WITNESS MR. HAMILTON: Fred V. Cerini, C-e-r-i-n-i.

Mr. Dunham had told me previously that he was going to the hospital for a check-up, which it had been anticipated would take about two days, the end of last week. This, of course, was a new development. I don't know whether it took place on Sunday evening or Monday morning.

Mr. Barry Dunham, brother of William Dunham and one of the limited partners, is present; was here yesterday and is here now, and tells me he talked to his brother on the telephone in his hospital room last evening and it's not a serious illness, but his doctor has ordered him to stay in the hospital and in bed.

I had previously prepared an opening statement for William Dunham in conjunction with him when he was in my office a week ago last Thursday, which, with the consent of the committee, I would read for the record, showing -- simply a statement of what we have brought with us.

Senator Arnold, Senator Fisher, Ladies and Gentlemen:

In Senator Arnold's letter of March 7th, he asked that Del Mar Caterers bring sufficient records to

establish the lease and contractual relationship between the Del Mar Caterers and the 22nd Agricultural District and the record of payment by the Caterers to the District. I have a record of payment of rent for the past six years and of concessions for the past five years. I have photo-stats of the daily payment sheets for last year's fair. I have a copy of the current concession agreements and the office lease, which have just expired, and the Bing Crosby Hall agreement, which has just expired.

There are no existing leases between the Caterers and the District. The Caterer's office had been leased since 1956, and there had been an agreement regarding Bing Crosby Hall since 1952. These leases have expired.

The Caterers, at their own expense, have built a warehouse on the corner of the Fairgrounds with the approval of the District. Also, at their own expense, the Caterers have built the stable cafeteria at the request of the District.

In accordance with the oral agreement between the District and the Caterers, there were no leases on these buildings and no payment either by the Caterers or by the District.

I will be glad to try to answer any questions you may have regarding these matters and if there are other documents the committee would like, I will endeavor to furnish them.

I prepared that for Mr. William Dunham; therefore, I will quit there and answer any questions that I can. I might say --

THE CHAIRMAN: You were submitting certain data to the committee?

THE WITNESS MR. HAMILTON: I have these documents that I mentioned. I am prepared to -- I have had the -- the photostats, of course, I will leave with the committee.

THE CHAIRMAN: Thank you.

THE WITNESS MR. HAMILTON: The leases that have expired, I have only the original, so if the committee would like the expired leases, I will have them reproduced and submit them.

THE CHAIRMAN: We would appreciate it if you would do that, Mr. Hamilton.

THE WITNESS MR. HAMILTON: Then, I will see that you get copies of everything that I mentioned.

THE CHAIRMAN: Thank you.

THE WITNESS MR. HAMILTON: I was counsel for the Caterers from about 1954 until October of 1957. I was away from San Diego most of the time from '57 to the middle of '58, during which time their affairs were handled by one of my former partners. I resumed as general counsel for the Caterers in approximately September of 1959.

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: Mr. Hamilton, how long has this

firm been in business?

A I believe that the present firm has been in business since about 1954. There was a firm, the Anderson-Dunham Company, in the catering and feeding business prior to that, and before that, I believe it was just Anderson. I did not represent those companies.

Q Now, is the Del Mar Caterers a corporation?

A A limited partnership.

Q It is a partnership? Who are the partners?

A William Dunham, Barry Dunham and their two wives.

MR. BARRY DUNHAM (Speaking from the audience): Mrs. Sam Dunham and Mrs. Susan Dunham. Would you like to have me come up?

THE CHAIRMAN: Is that it?

THE WITNESS MR. HAMILTON: That's right. Thank you. Mrs. Sam Dunham is a widow of Sam Dunham, who is the principal owner of the company.

Q BY MR. WATERS: There are no other partners?

A The ones he mentioned.

Q He mentioned four Dunhams?

A Five Dunhams.

MR. BARRY DUNHAM (Speaking from the audience): There only was four Dunham brothers. I am Barry Dunham. Two brothers are deceased.

MR. WATERS: Would you please come up, sir.

BARRY C. DUNHAM,

called as a witness jointly with Mr. Hamilton, having been first duly sworn, was examined and testified as follows:

THE CHAIRMAN: Give your name.

THE WITNESS: Barry C. Dunham.

Q BY MR. WATERS: And you are Barry C. Dunham, and you are a partner --

A I am a limited partner in the Del Mar Caterers.

Q And the other partners, besides yourself and Mr. William Dunham are who?

A Mrs. Sam Dunham and Mrs. Hal Dunham.

Q And that's all?

A That's all; Bill Dunham -- William Dunham.

Q Who is Julia Day?

A Well, she is a daughter of Sam Dunham.

Q Is she a partner?

A She actually is -- she and Sam Dunham, Jr., inherited one-half of the partnership of Mrs. Sam Dunham, so I imagine they are considered partners too.

Q And the general partner is who?

A William Dunham.

Q Just one?

A Yes, sir.

Q And he is a stockholder in Operating Company?

A BY MR. HAMILTON: Yes, he is.

A BY MR. DUNHAM: Yes, he is.

Q And those are the only persons who have a financial interest in Del Mar Caterers?

A That is true.

Q Do you have a liquor license?

A Yes, sir.

Q In whose name?

A William Dunham, general partner.

Q William Dunham only?

A Yes.

Q It is not the Del Mar Turf Club jointly on that license?

A I believe not.

Q I am informed by the Director of the ABC that it is.

A Well, the location is Del Mar Turf Club. It's mentioned as a location, but not as a -- not as a partner on it.

Q I am informed by the Director of the ABC that the license is issued jointly in the name of Del Mar Caterers and the Del Mar Turf Club.

A I don't believe so, sir.

Q Do you know that, Mr. Hamilton?

A BY MR. HAMILTON: No, I do not. I didn't

participate in the application for the license.

Q Well, if you don't know it, I can't ask you why it is.

A That's right.

Q What business do you conduct?

A They conduct a general catering and in-plant feeding business. I believe they have contracts at North Island with the Navy.

A BY MR. DUNHAM: The only businesses the Del Mar Caterers operate are the race track and Rincon Springs, which is located about forty-five miles inland from Del Mar at the foot of the mountain.

Q Is that conducted from your office at Del Mar?

A Yes, uh-huh.

Q The Rincon-- what did you refer to it as?

A Rincon Springs.

Q That business is conducted from Del Mar?

A That's right.

Q Year-around?

A Yes.

Q You and -- you are the concessionaire for the Operating Company of Del Mar Turf Club during the race meet?

A Yes, sir.

Q And you are a concessionaire of the 22nd District Agricultural Association during the Fair?

A Yes, sir.

Q Are you a concessionaire of that District at any other time?

A Not directly. We have special events at the track during the winter months; for instance, the automobile races over the weekend, we were concessionaires for that.

Q Did you pay the District for a -- rental for the privilege of being concessionaire at the auto races this last weekend?

A Rental was handled by the automobile club itself. We paid the automobile club rental, a commission percentage on the volume of business that we did.

Q You paid the automobile club?

A Yes, sir.

Q Did they pay the District, to your knowledge, anything for the concession?

A No, I don't know what they paid the District. I have no knowledge of that.

Q You operate a cafeteria on the premises of the District at times other than the racing meet?

A During the months that the Western Harness Races are wintering in Del Mar.

Q Do you have anything in writing from the District giving you the right to operate that cafeteria?

A I don't think that there is anything in writing between the District, no, sir.

Q Now, that cafeteria building was built by the Del Mar Caterers?

A Yes, sir.

Q Do you have anything in writing from the District which gave you permission to construct that building on the State property?

A We haven't that particular building, nothing in writing here.

Q Do you have anything in writing anywhere, Mr. Dunham?

A That I will have to find out for you, sir.

I am quite sure it's at -- the minutes of a meeting of the Board of Directors of the 22nd District.

Q In the minutes of the Board of Directors' meeting?

A Yes, sir.

Q But you, as a firm, have nothing in writing, giving you the right to construct that building on the property?

A As I say, we might have in our office. That's something I will have to look into for you.

Q You received a letter from me, requesting that the Del Mar Caterers furnish such documents at this time?

A We received a letter, yes, sir.

Q You constructed a warehouse on the premises of the 22nd District?

A Yes, sir.

Q Do you have anything in writing, which gave you

the right to build that building on State property?

A BY MR. HAMILTON: I believe I can answer that. We have an excerpt from the minutes of the 22nd Agricultural District of August 9, 1954, as follows: "The Del Mar Caterers have requested permission to erect a forty by one hundred and twenty warehouse on District property. The Board agreed that the northwest corner of the Fairgrounds would be the proper location and authorized the manager to grant permission to Del Mar Caterers to erect the warehouse."

That's the end of the excerpt.

Q But other than that, there is nothing?

A No, sir. (BY MR. DUNHAM)

Q You operate out of that warehouse on a year-around basis; is that correct?

A Yes, that's true.

Q Do you make any payments to the District for the privilege of using the premises?

A We have not.

Q Do you make any payments to the District for the privilege of using the cafeteria?

A We have not.

Q Do you pay any taxes on the property, on either the cafeteria building or the warehouse building?

A Now, that I -- that I cannot answer.

Q Can you answer that, Mr. Hamilton?

A BY MR. HAMILTON: No, I do not know.

Q Do you pay any taxes on the office building for which you do pay rent?

A BY MR. DUNHAM: That I cannot answer.

Q Did you pay any sales tax at the cafeteria during the 1959-60 Western Harness Association meet?

A Do we pay a sales tax?

Q Did you pay it for that -- during that meet?

A Why yes, sir, I imagine we did.

Q Did you pay it?

A BY MR. HAMILTON: Do you know.

A BY MR. DUNHAM: No, I don't know.

Q Did you pay it the previous year?

A I have nothing -- I assume that we did pay a sales tax.

Q You don't know?

A I don't know.

A BY MR. HAMILTON: I wanted to clarify the answer of the witness previously. He said that he did not know whether he had paid a sales tax last year or this year for the Western Harness Meet.

Q Now, there are a number of events that go on at the Fairgrounds during the interim?

A BY MR. DUNHAM: Yes.

Q Such as the Sports Car Club of America?

A Yes.

Q And do you operate concessions at, or in connection

with these events?

A Well, some of the events we -- this particular sports car event, we did have the concessions, yes, just this last past weekend.

Q How about the Harlem Globe Trotters?

A We have had concessions for the Harlem Globe Trotters, yes.

Q Did you make any payment to the District, percentage, or otherwise, for the privilege of operating those concessions?

A I cannot answer that.

Q Your answer is you don't know whether you made any --

A We have equipment in Bing Crosby Hall in two locations, and the -- the only reason that we would be in there would be on the request of the District to such an event. Whether we paid the District rental on those particular events, I do not have the information.

Q Do you have an agreement between the District and yourself, giving you the right to have equipment in that building?

A Yes, sir.

A BY MR. HAMILTON: May I say we did have.

Q May I have a copy of that?

A We did have. It has expired. The lease was started in 1952 and was re-leased, expiring in April of

this year. Subsequent to that time, the action was taken by the District of which I have a photostat; it's a report of a committee. The report was adopted on April 11, 1960, "A Report of the Exhibits Concessions Committee was read by Director Barnes, Chairman. Upon motion of Director Barnes, seconded by Director Richardson and carried, the recommendations of the Exhibits Concessions Committee were approved and adopted."

I can leave this with the committee. The net effect of this action was that independent contracts for each of the locations of the caterers were set up for the coming Fair, including Bing Crosby Hall.

Q Yes, I understand that during the Fair, that there have been some contracts for the concessions. I am asking whether during the interim period there were any contracts.

A I can say this: Until April, the Caterers had a year-around contract, covering Bing Crosby Hall, and I have been told by Mr. Bill Dunham on many occasions that -- at the grounds and other places, that he had not gone into any concession except at the request of the District, and you must realize that the Caterers have no control over any of these places.

They have many, many thousands of dollars invested in equipment and their equipment is there on the grounds, and when the District wants to have an event, they ask the

Caterers to provide services, which the Caterers do more or less as an accomodation, and not as a profitable operation. That isn't more or less; that is a statement. They have done it at the request and as a convenience to the District.

They don't know when these things are coming up; they can't schedule them ahead of time usually.

Now, of course, the Western Harness Racing, they do know about, but we have a list -- I shouldn't say a formal list, but I have been told a number of occasions of damages to their equipment in Bing Crosby Hall by the one night operations. Sometimes they have to loan the equipment at the request of the District; they don't get to operate it themselves, so this is not a business conducted by the Caterers; this is an accomodation which they have been glad to give to the District and have been requested over and over over the years and never turned them down.

Q Were they asked to furnish any food or beverage concession for the sports car club by the District?

A BY MR. DUNHAM: The contract was made directly with the sports car people with our contact man at the track. The district, as far as I know, didn't enter into the transaction.

Q Were you asked by the District to provide the cafeteria for the Harness Association?

A That had been done for the past several years, and I don't know the full particulars on that.

A BY MR. HAMILTON: Mr. Dunham told me that he had been requested by the District to provide that.

Q When you say "The District," who do you mean?

A Usually the manager; sometimes a member of the Board.

Q The manager? Is it your understanding the manager has the authority to in effect rent the District property?

A With the -- that is, it's my understanding that he has authority to arrange for services to be performed on the grounds of the District if he is so directed by the Board.

Q Well, isn't it usual, as far as you know, that when these concession privileges are given, that there is a contract executed and approved by the District of Fairs and Expositions?

A I can't answer that. I haven't had any experience except with this one.

Q Well, yes, but, Mr. Hamilton, as a matter of fact, they do execute agreements in connection with the concession for the Fair, do they not?

A For the Fair, yes.

Q Why would it be any different any other time?

A Because from our standpoint, the other times we are doing it as an accomodation; I don't know what the District was doing.

Q There was no profit made off the cafeteria

operation?

A None. It has shown a loss during the entire period of its operation.

Q Why does the Del Mar Caterers provide the services?

A Because they think its good business for them to provide all the services they can reasonably provide to the District.

Q They operate the cafeteria during the race meet?

A BY MR. DUNHAM: Yes, sir.

Q Excuse me.

A BY MR. HAMILTON: He answered it yes.

Q Do you make a profit on that?

A To the best of my knowledge, they don't keep separate books on the meet for that cafeteria; I haven't seen them.

Q Did you make a profit on the concessions at the sports car meet?

A BY MR. DUNHAM: Well, it -- I can't give you an answer on that, because the -- we have just the volume of business done and all bills are not in and so on.

Q Do you have any further statement you would like to make, Mr. Dunham or Mr. Hamilton?

A BY MR. HAMILTON: No, sir.

THE CHAIRMAN: Any questions by the committee?

Thank you, gentlemen.

SENATOR FISHER: I wonder, Mr. Hamilton --

THE CHAIRMAN: Senator Fisher.

SENATOR FISHER: -- if you can leave us copies of the earlier minutes, 1954, I think it was.

THE WITNESS MR. HAMILTON: I had only this one photostat, which I will have copied and delivered, if I may.

SENATOR FISHER: I do have a further question.

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: There was an agreement entered in the record yesterday, between Operating Company and the Western Harness Association, in which the -- there is a provision that the food provided shall be arranged by the Operating Company. Have they entered any -- into any agreement with you relating to that cafeteria operation for the Western Harness Racing Association tenants?

A BY MR. HAMILTON: Do you know whether there is a written agreement on that?

A BY MR. DUNHAM: No, there isn't, I don't believe.

A BY MR. HAMILTON: I know of no written agreement on that; however, I didn't make a search for that. The only things that I made a search for were agreement between the caterers and the District. I would be glad to find out if there is a written agreement and if there is, to furnish you a copy of it.

A BY MR. DUNHAM: I didn't quite -- you mean in years past?

A BY MR. HAMILTON: No, is there a contract between the Harness Association and the Caterers for servicing the cafeteria.

A BY MR. DUNHAM: The Harness Racing people?

A BY MR. HAMILTON: Yes.

A BY MR. DUNHAM: No, there is not.

Q I don't find it right offhand, but there is such a provision in their contract, and I wondered if they had entered into another contract with you.

A BY MR. HAMILTON: I know of no written contract. We know, of course, the Caterers supplied the services.

Q You do have a written contract with the Operating Company?

A Yes, sir.

Q Has that been submitted for the record here?

A We did not submit it. I don't know if the Operating Company did or not.

Q I wonder if you could, at your convenience, Mr. Hamilton, submit a copy of that for the record of the committee.

A As I understand, we are on the other end of the string. I wonder if the committee would have any objection to getting that from the Operating Company, who are represented here? They have the contract with the District; we don't. You see, we are successors.

Q No, I am concerned with your contract between .

yourself --

A I am well aware of that.

Q Between yourself and the Operating Company.

A I wondered if it would be just as convenient for the committee to get that from the Operating Company.

Q Well, since you are on the stand, I am asking you for it at the moment. We have asked them for a lot of things, and they have provided them without any -- without any question.

A I have been instructed by Mr. Dunham to cooperate with the committee, so I will do my best.

Q All right. Thank you. I am referring to page -- I was referring to page 3 of agreement dated the 14th of March, 1957, in which agreement the Operating Company is called the company and the Western Harness Association is called the association, and there is a provision: "Company agrees through catering contractors of company's choice to operate the cafeteria and association shall have no right to any of the proceeds from such operation."

Does that contract that you have with Operating Company provide for services at the time of the Western Harness Association tenancy?

A I can't answer that. I did not negotiate the contract. I know there is such a contract, but as to its contents, I don't know.

THE CHAIRMAN: Thank you, gentlemen, for waiting over.

You were scheduled on yesterday afternoon. We appreciate it.

MR. WATERS: Mr. Chairman, may I ask one question?

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: The Del Mar Caterers were occupying a part of the premises' buildings of the 22nd District over in the area of the grandstand for a warehouse and -- in which a walk-in refrigerator and certain other food storage facilities were operating; is that not correct?

A BY MR. HAMILTON: They did occupy a portion of it, yes, sir.

Q And they occupied that portion of it during other than the racing meet?

A Yes, sir.

Q And what -- who gave them permission to do that?

A As I understand it, they had permission from the District, whether it was conveyed by a manager or by one of the Board members, I do not know.

Q But nothing in writing?

A That's correct.

Q No payment made for the use?

A As far as I know, that is true.

Q No reimbursement for the utilities that were used up in connection with that usage?

A BY MR. DUNHAM: It was only used in the -- in the operation of the race meets, sir.

Q Sir?

A It's only used during the race meet. They operate --

Q Was it not in use after the race meet?

A No, sir.

A BY MR. HAMILTON: Some equipment was stored.

A BY MR. DUNHAM: Not in the west end of the grandstand, if that's what you are speaking of.

Q It was not in operation at any time other than the race meet?

A No, sir, that's the only time.

Q You were using the area for storage?

A Yes.

Q Not food storage?

A No food.

Q You had nothing in writing giving you that permission; again it may have been the manager who said you could?

A Yes.

THE CHAIRMAN: Thank you.

The Committee is in recess until 1:30.

(Whereupon a recess was taken until 1:30 p.m., after which the following proceedings were had:)

THE CHAIRMAN: The committee will come to order.

I would like to inquire if Mr. Januine is in the audience or anyone representing him.

Colonel Koester, or anyone representing him.

MR. WATERS: Mr. Chairman, they were not to be here until 2 o'clock. I would like to suggest we call Mr. Mannen at this time.

THE CHAIRMAN: Mr. Paul Mannen.

PAUL T. MANNEN,
called as a witness, having been first duly sworn, was
examined and testified as follows:

THE CHAIRMAN: Will you state your name and your --
who you represent?

THE WITNESS: Paul T. Mannen, 432 $\frac{1}{2}$ 4th Street, Encinitas,
California.

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: Mr. Mannen, you were the Manager
of the 22nd Agricultural District until July 31st, 1959?

A Right.

Q And how long had you been Manager?

A Approximately eleven years.

Q Starting about 1948?

A Either 1948 or '49. I don't know the exact date.

Q And prior to that, you were a member of the
Board of Directors of the 22nd District?

A Right, nine years.

Q So that for a period of approximately twenty
years, you were in some way connected with the affairs of

the 22nd District?

A That's correct.

Q Prior to becoming Manager of the 22nd District, had you had any experience in managing a Fair?

A No, sir.

Q Had you had any experience as a State employee?

A No, sir.

Q Prior to becoming Manager, were you in private business?

A Yes.

Q At the time that you became Manager, had you disposed of your private business?

A I had not at that time, no.

Q Did you dispose of it?

A At a later date, yes.

Q Approximately when did you dispose of it?

A Oh, 1950, '51, probably.

Q A year or two after you became Manager?

A Uh-huh.

Q Were you employed as a full time Manager?

A Yes.

Q You are presently engaged in the savings and loan business?

A Yes.

Q When did you first become active in that business?

A I was first interested in the savings and loan

business about 1955.

Q In this present savings and loan business?

A In the organization of it, yes.

Q And what is your position in the savings and loan business?

A I am President and managing officer.

Q You are the Executive Officer?

A Yes.

Q And have been since about 1955?

A No, the position of President was held originally by Mr. William Fleetwood, and I have held it since. As far as Managing Officer, we have had three managers since our start. Actually, we did not start business until January 2d, 1957.

Q And at that time, you became the managing officer?

A No, I did not become the managing officer until sometime in 1959, I believe -- '58, excuse me.

Q Sometime in 1958?

A Yes.

Q Do you remember approximately what time of the year?

A I would say somewhere along in the fall of '58, September, probably.

Q So that from September, 1958, until July of 1959, and thereafter, as a matter of fact, you have been the full time manager of the savings and loan business?

A No. I was a part time manager to start with, Mr. Waters.

Q You were part time?

A Yes, sir.

Q How much time did it require during that period of your time?

A What period of my time?

Q During the period from September, 1958, to July, 1959, how much time did your part time services with the savings and loan association require of you?

A Oh, possibly ten to twenty hours a week.

Q At the same time, you were engaged as a full time Manager for the 22nd District?

A That is correct.

Q As Manager of the 22nd District, did you know of a publication entitled Fair Administrative Manual?

A Yes, I was aware of such a manual.

Q Had you ever seen it?

A Yes, I am quite sure I had.

Q Did you -- what did you see -- what did you do to see that your employees followed the manual?

A Well, I am not quite with you, Mr. Waters. Would you repeat that question again?

Q I will rephrase it.

Did the employees of the 22nd District know about the manual?

A I presume that they are aware of such a manual, yes.

Q Did you do anything yourself to see that they were aware of it? Do you have a copy of the manual with you?

A Yes, sir.

Q I am referring to this document.

A It -- quite a few of the members of the staff were aware of the document and did refer to different parts of it.

Q The document you have just identified as the Fair Administrative Manual?

A Yes.

Q Your statement is that employees had seen it?

A Some of them had seen it. I am quite sure that not all of them had seen it. We do have janitors and so forth and so on that might not.

Q Who have seen it, Mr. Mannen?

A Oh, possibly bookkeepers, secretaries and department heads in some of the more important categories.

Q Now, the 22nd District was audited by the Division of Audits from time to time?

A Yes, usually once a year, and then, I think they dropped back once every two years due to the shortage of funds one time.

Q Those audit reports would contain specific recommendations as to the deficiencies in management which existed

at the 22nd District there?

A I would say there were general recommendations from time to time, yes.

Q And what did you do about carrying out the recommendations?

A Most of the recommendations were carried out and taken care of as quickly as possible; however, the reports were not presented to us until after a succeeding Fair had been completed.

Q Now, in 1954,--let me ask you first, Mr. Mannen, when you would receive these audit reports, would you advise the Fair Board of the recommendations?

A Yes. When the Fair Board itself did not receive the report, which I believe they did, they would be discussed at the next board meeting.

Q Now, in addition to their report, which I -- of which I see you have some copies, they would write to you, would they not and advise you of certain recommendations they had made by letter?

A Usually, that would come in in advance of the actual report itself.

Q In 1954, a letter dated February 24, to Eric McLachlan from Carl Hurlburt, lists twenty-five recommendations. Now, would you receive a copy of that kind of a memorandum?

A I believe so.

Q One of the recommendations there was that consideration be given to the maintaining of records showing the accumulation of vacation and sick leave inasmuch as the association has several regular employees.

What did you do about carrying out that recommendation?

A I believe I asked the bookkeeper at the time to carry out the recommendation.

Q Did not some of the recommendations that were made recur from year to year?

A There may have been repeats. I am quite sure there were at times due to the fact that the reports did not arrive in time for us to do anything about it before the next Fair had been completed. Usually, those arrived about the end of July and the Fair was the end of June, and so it was impossible to make some of the recommendations and put them into effect before the next Fair.

SENATOR FISHER: Mr. Chairman.

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: Were any of these reports from the Division of Audits -- excuse me -- criticisms contained in there -- were any of those outside the matters contained in the Fairs Administrative Manual, or was that a reiteration of some of the material that was already in the manual?

A I do not know, Senator Fisher, because I have not

refreshed my memory; it either was in the manual, or was the job and duty of the Audits Division.

Q And you never found any instance that you now recollect when the directions and suggestions made in the annual audit were at variance with the previous instructions you had been given through the Administrative Manual and otherwise?

A Would you go over that again, please, because I did not quite follow you on the way through.

SENATOR FISHER: Would the Reporter read it?

(The question was read by the Reporter).

THE WITNESS: I presume you are correct, because I do not recall that.

Q BY SENATOR FISHER: So they covered merely questions of a failure to comply with the directions contained in the Administrative Manual?

A Well, I don't know.

Q Insofar as you now recollect, there may be --

A Well, I could say insofar as I now recollect, the reverse of that too.

Q Well --

A Because I have no recollection of what is in the manual or have a special recollection of what is in any one of the audit reports; however, I could refer to them.

Q Well, I just wanted to clear that up before we proceeded further.

SENATOR FISHER: Go ahead.

Q BY MR. WATERS: To your recollection, there were these recommendations made after each audit, throughout the period you were Manager; is that not right?

A Yes, there were some recommendations made every year, I am sure.

Q And some of them were repetitive?

A I would say they would have to be repetitive, because we didn't -- they didn't arrive until another Fair had been completed, so your mistake would always be two years in a row at a minimum. It may have been repetitive more often than that. I do not know.

Q Mr. Mannen, did the 22nd District maintain any cost accounting or cost distribution system?

A No, and when you would name cost distribution, you would have to explain it, I believe, Mr. Waters. Cost distribution would be different for every Fair in the State, and it would probably be different every year, so cost distribution might be explained before an answer could be given.

Q Well, all right, I will attempt to do that. The 22nd District's principal business is the management of a rental property, namely, the race track; is that not right?

A No, that isn't right. The duty of the Fair Board is to put on a Fair.

Q The principal revenue of the 22nd District is

derived from its management of a rental property; is that correct?

A Correct.

Q Now, as a landlord, it would be desirable to know the costs of the rental property that you are managing, would it not?

A The costs?

Q Yes, sir.

A Yes, it would.

Q Did the District maintain any such cost figures?

A Yes.

Q They did?

A Yes.

Q Would you tell me where it maintained them?

A The cost of all of the buildings are at the District in the bookkeeping department, all of the improvements on the ground.

Q That is the improvements.

A And the property.

Q I am talking about other costs that would be chargeable to the function of managing the rental property and maintaining the rental property.

A There was no such split made in the costs.

Q And there were many activities in connection with that management which would not be -- it would not now be possible to determine what the proper charges should be; is

that correct?

A It would be quite difficult, yes.

Q Did you ever consider attempting to make -- keep such records so that you -- the District would know exactly what it was costing them to operate a rental property?

A No, but we did make several studies from time to time, Mr. Waters. We compared wages to those of other fairs throughout the State. Usually our wages were about two and a half times -- sometimes not that high -- with those of the wages in other comparable positions in other fairs.

We also allocated a portion at a particular time to the operation of the race track portion of it, you might say, or the income portion of it, and felt that the wages, because of having a race track operation -- they were somewhat higher than they would have been had we not had a race track operation.

Q As a matter of fact, you had some very extensive costs involved, because you were operating a rental property in connection with setting up and cleaning up for the Fair?

A Very definitely.

Q Which would not ordinarily occur and does not occur, as a matter of fact, at other fairs?

A You are right.

Q But those -- those costs were not separated so as to determine which would be chargeable to the operation of the rental property and which would be chargeable to the

Fair?

A No, that's right.

Q That's my question, if you considered at any time making an effort to keep the books on that basis?

A No, we were obliged to keep the books in accordance with the recommendations of the Department of Fance, Division of Fairs and Expositions.

Q The Department of Finance? Would that preclude you from keeping a cost accounting of your rental operation?

A No, it would not. No, it would not.

Q Mr. Mannen, during your tenure as Manager, it appears that there were many purchases made by the District which there -- in which there were no competitive bids received by the District; is that correct?

A I would say this, Mr. Waters, and gentlemen: That competitive bids wherein -- you would probably be correct; however, we did maintain catalogs and we also had verbal bids on most of the items that we purchased. Naturally, smaller items we would not always get bids on, day to day use.

Q BY SENATOR FISHER: Were there some regulations which governed that?

A I believe there are regulations. I believe it says that you should have competitive bids, and we complied with that. We had catalogs which showed us competitive bids, or we had verbal quotations, which would be competitive.

I do not believe the law says it must be a written bid; however, we went much further. We had written bids on a good many items that were sizeable that were not required by law. We had probably one of the highest incomes due to a carnival operation, due to situations of bidding and maintaining it. It was followed by a good many fairs at a later date, so we were able to get, by using it properly, save the State money or make the State money, whichever way you want to put it.

Q In every case, so far as you know, where the law or the regulations require competitive bidding, it's your testimony you did have competitive bids, except some of them may have been oral bids, rather than written bids?

A I would say that in most cases. I wouldn't say in every case, because undoubtedly, there were some cases that the last minute right before the Fair, when you would have to take care of last minute items.

Q Do you think of any bids of any substantial nature in which there were not competitive bids?

A Not where competitive bids were obtainable. On some items they were not obtainable.

Q Did you advertise for bids in every instance where the law required them to be advertised?

A I believe we did advertise some bids in most --

Q Do you remember --

A I know of no particular instance right now that I

can recall -- where I can recall that we did not.

Q BY MR. WATERS: Mr. Mannen, during the years '57, '58 and '59, there were lumber and building materials purchased totalling \$56,957. Were there competitive bids received in connection with those purchases?

A I believe those -- that there were competitive bids received on those items.

Our ground superintendant at the time would compare prices, I am quite sure, between Sun Lumber and Lumber and Builders Supply and other suppliers in the area.

Q Let's clear up what you mean by bid. What is a bid, in your opinion?

A My bid is a quotation on a given item by competitive suppliers received in any manner in which you wish to receive it. It could be by semiphore, as well as written or verbal.

Q That is your understanding of a bid?

A I don't think it has to be written, if that's what the inference is, Mr. Waters.

Q Did you purchase any part of this \$56,957.87 through the State Division of Purchases?

A No, we did not, I don't believe.

Q Many of these purchases totalled in excess of one thousand dollars, did they not?

A I believe you are correct on that, yes.

Q Are you familiar with the sections of the Govern-

ment Code governing purchasing?

A I am not.

Q You are not?

A I am not.

Q As Manager of the District, you are not familiar with the Government Code sections beginning with 13,390 and continuing on, which govern the purchases by State agencies of materials and supplies?

A I am not.

Q So that you are not aware of the fact that there is a requirement that whenever any purchase of supplies or equipment or materials/^{is}to be made in excess of \$1,000, it requires written bids and there is a procedure set forth by which those bids will be obtained?

A I am not aware of it.

Q Were you aware of the provisions in the Administrative Manual, starting 36.1, which sets forth how purchases are to be made?

A I am quite sure that I have read it, yes.

Q And the particular section which says purchases of materials and supplies costing over five hundred dollars require the approval of Fairs and Expositions Division and are to be submitted on Form F-9, an expenditure order; are you aware of that?

A I am aware that that is in the manual, yes.

Q And it's your statement that you adhered to that

regulation at all times?

A I would say that there probably are occasions when we did not.

Q There probably were a few occasions or many occasions?

A Well, I do not have the records at my disposal, so I would have to check on that, Mr. Waters.

Q The Division of Audits, in their report for a period from January 1st, 1958 to July 31st, 1959, lists quite a number, in dollar amount, several thousand dollars; do you have that report?

A I do not have a copy of that, I do not believe. '59, you say?

Q It's on page 6 of this report.

A (Referring to report) Uh-huh.

Q Do you take exception to any of those items listed?

A No, I could not say that I do today.

Q BY SENATOR FISHER: Just for the record, Mr. Mannen, those amount to about \$50,000 in round numbers.

A Right.

Q BY MR. WATERS: I might point out to you that Lumber and Builders Supply Company on that list, there's an amount of \$3,794.43 in 1958?

A Uh-huh.

Q So that the list is not complete, because during

the periods '57, '58 and '59, the total lumber and building materials was over \$50,000; in fact, the lumber and building supplies purchased was \$31,455.30, most of which was purchased from Lumber and Builders Supply Company in Solana Beach without expenditure order, without bids; is that not correct, Mr. Mannen?

A Well, I would not say without bids. I am quite sure Ted received bids. He always had instructions to maintain purchases under \$500.00.

Q But the purchases -- many of those purchases had to exceed \$500, Mr. Mannen, to spend that much in one year, and I might say that the books indicate that the purchases were made on a day to day basis, but the cumulative total for a month would exceed \$1,000; is that not correct?

A What was that again, please?

Q Purchases were made on a day to day basis, the aggregate amount for the month would exceed \$1,000?

A I would say that the -- you are probably correct that they were made on a day to day basis.

Q If they were made on a day to day basis, how did you get the bids, Mr. Mannen?

A Mr. Terwilliger received the bids, I presume, by telephone.

Q And by "bids", you mean a price quotation?

A Right.

Q Did you get any price quotations from anyone else?

A I believe he got competitive quotations on all the purchases that he made.

Q And where in the record would that show, Mr. Mannen?

A Well, I don't believe it would show in the record if they were verbal quotations.

Q Now, the same type of purchasing was done in connection with electrical supplies and plumbing supplies, was it not?

A That is true.

Q Also in certain other supplies, including nursery supplies?

A Well, the nursery supplies, they were a specialty item, I would say, but Mr. Salisbury (phonetic) did have authority to make purchases wherever he received the lowest quotation.

Q Quotation, not bids?

A No, bid. Let's say the lowest verbal bid.

Q In 1958, two purchases were made in connection with nursery supplies, one in the amount of \$4,783.95, another, \$2,003.16; in 1959, another in the amount of \$1,248. Were there any bids in connection with that?

A I presume there was -- there were bids, verbal.

Q Written bids?

A No, I do not believe they were written bids.

Q Your version of the bid, the price quotation, of

which there is no record to show that there were any quotations from anyone else?

A Well, I believe that possibly Mr. Salisbury would have those records.

Q Now, in connection with contracts, Mr. Mannen, construction contracts, I note that there were many contracts which were written so as to provide that the contract would not exceed \$9,990; why was that?

A Well, actually, the situation was written because of the law which prohibited us from having a bid over \$10,000 unless it was either handled by the Department or Division of Architecture, or we advertised in the Southwest Builder, I believe was the name of the magazine in Los Angeles.

We felt that we could get written bids and give the local people a chance to bid on this. We knew the quality of their work and for that reason, why, we usually attempted to keep the bids below \$10,000. The Board felt that it was a wise situation, a wise move to have the local, small contractors benefit from these procedures.

Q BY SENATOR FISHER: Who were the local, small contractors that did benefit from it?

A There would be such fellows as Pete Tholl, I guess he was Del Mar; Dan Smith in Del Mar; I can't think of all the other individuals that would be in that category, but the plumbing companies were in the same category, I believe, in that area.

Q You broke them down so that you wouldn't have to go through the procedure set up by statute, or by the --

A No, we did go through procedure under \$9,999. I contend that it was a wise procedure and still is a wise procedure.

Q Was that how the parking lot was paved?

A No, Senator, not the main parking lot. The main parking lot was under contract with the Division of Architecture handling it. The inside parking lots, south of the Avenue of Flags, and west of the westernmost exhibit building, were paved all by small contracts and starting one year and keeping -- and continuing to go.

Q In a series of contracts, all of them just under \$10,000?

A Yes, usually about one a year.

Q How many contracts were involved in that, do you recall? Roughly.

A Probably six or eight over the years.

Q And were those all to different contractors?

A No, I would say they were not. There were probably three or four different contractors involved, but certainly were not eight is what I meant.

Q Do you recall who they were offhand?

A Well, let's see. There's -- Oh, brother. Well, there's Hazard, Daley, there was Ralph Slaughter, I believe, Julian, and I can't think of some of the others.

THE CHAIRMAN: Mr. Waters.

Q BY MR. WATERS: I might name off some of the contractors that you said. You said small contractors; you have named Hazard and Daley --

A Will you read the entire list over the years?

Q I don't have the entire list. I have some. Smith Construction, Hubbard, Crutchfield?

A Yes, all three very small.

Q Cox and Gregg, Harris, Helman Smith, B. F. Cozens, Tholl, Baker Roofing; those are some of them?

A Well, thank you. Those were all small contractors.

Q Now, your statement was that it was either because of requirements of getting approval or having the work done under the Division of Architecture or advertising?

A Well, I don't recall the exact provisions of the law, but we do have to advertise above a certain figure.

Q As a matter of fact, there's a specific requirement that whenever you are undertaking construction work in excess of an estimated ten thousand dollars, you must advertise for bids; is that not correct?

A I do not recall. I would have to look at the manual to find out. I believe you are correct that it would have to be advertised in the Southwest Builder. It's a particular construction magazine. Other than that, you could advertise in any manner you want.

Q No, sir, Mr. Mannen, I don't believe there is

any requirement in the statutes you have to advertise in any specific publication. It is only the requirement you must advertise in a publication of general circulation.

A Well, I believe there is a ruling then of the Division of Fairs and Expositions that would cover the particular magazine in San Francisco and the one in Los Angeles that is known to the construction trade and someone else will have to give you that answer, because I do not have it; however, such a ruling was in effect.

Q And in order to avoid that requirement, you would prepare contracts in the amount of \$9,999?

A Well, in effect we would attempt to have our local contractors benefit from the work that's being done out there, and I think it was quite a compliment to management that we were able to get bids in almost every case that came under the ten thousand dollar figure, when it was the desire of the Board of Directors that that be done.

Q Wouldn't it have been to the advantage of the District to get the work done by the contractor who would do the work according to specifications for the least amount of money?

A You are correct, but in getting the work done for the least amount of money, sometimes you are -- your supervision in watching the contractor might be a greater problem and a greater cost than the bid itself.

We had a pretty fair knowledge of the abilities

and of the type of work that local contractors were capable of doing.

Q But by writing it for \$9,999, you were not then required to advertise for bids, you were not required then to obtain bids from anyone who was -- who might be interested in doing the work, and you could, as a matter of fact, select yourself those from whom you would receive bids?

A We never did select anyone for a bid at Del Mar. Anyone that wrote in was on our list; we solicited probably as high as twenty quotations. We have solicited probably as low as five. It was a policy that we always had five quotations in anything.

Q Who decided which contractors would be solicited?

A The ones that had bid previously, plus any that had asked to be on the mailing list.

Q How would they know about the job, Mr. Mannen?

A Our publicity department always had publicity on every bid opening well in advance, as soon as it was approved by the Board. Meetings were covered by the Press and then our publicity department did prepare a release.

Q How did you receive bids, Mr. Mannen, sealed bids to be opened at a time and place certain?

A Yes.

Q Always sealed?

A I would say in most cases, yes. All of these that you are referring to, I am quite sure were sealed bids,

opened before the Board at a given time.

Q As a matter of fact, in some cases, you received it by telephone, did you not?

A I do not believe we received telephone bids except on the smaller items. You were talking about these specific paving bids, and the other -- the others, the contractors you read thereon.

Q No, sir. I am talking now about any contracts of this nature.

A I cannot recall of any at the present time.

Q On page 12 of the report, which I have handed you, which is the Examination of the 22d District Agricultural Association --

A Uh-huh.

Q -- I would like to direct your attention to the section dealing with "Contracts", specifically the reference to a contract with Sim J. Harris Company, specifically to the inset type, wherein it says what the State agrees, and ask you if you wrote that provision?

A It was undoubtedly written at my direction, yes, sir.

Q "STATE AGREES: To pay the contractor \$10,490 for the 50,000 square feet of paving." The last sentence, "The total amount of the contract will not exceed \$9,990.12."

Would you explain to the committee how you could write that into a contract?

A "The contract will not exceed \$9,990.12?"

Q Yes, what does that mean?

A On a square footage basis, that it would not exceed that.

Q Well, in the first sentence, "The State agrees: To pay the contractor \$10,490".

A But it only was that for fifty thousand square feet, so there was something less than fifty thousand square feet delivered.

Q The contract says, "The State agrees: To pay the contractor \$10,490".

A It also says total amount of the contract will not exceed \$9,990.12.

Q There appears to be some conflict in that provision, doesn't there?

A There does. It was accepted by the Department of Finance though.

Q Yes, I noticed that. I am going to ask the Division of Fairs and Expositions about that.

In any event, this contract -- there were no bids advertised in connection with this contract, were there?

A Yes, I am quite sure there were.

Q Advertised?

A Yes, sir.

Q There's no record of it in your --

THE CHAIRMAN: Senator Fisher.

Q BY SENATOR FISHER: Excuse me. Are you talking

about advertised in the sense they may have -- there may have been a publicity release, or advertised for bidding as set forth in State law?

A There was no ad in the Southwest Builder, whatever the construction paper is; however, there were publicity releases and all of the previous bidders, plus any paving contractors in San Diego County that we knew of was sent a --

Q You are talking about publicity releases rather than the advertising for bids specified in State law?

MR. WATERS: The legal notice that is required.

THE WITNESS MR. MANNEN: I am not sure that advertising is required under ten thousand dollars.

Q BY SENATOR FISHER: Well, how did you know that it was -- that fifty thousand feet was going to be under ten thousand dollars?

A Well, we had to miss one, didn't we, after awhile? We apparently did, and we --

Q Mr. Mannen, just a moment. All I am trying to find out is how did you know you didn't have to advertise for bids in the manner specified by law?

A We attempted to keep it under ten thousand dollars.

Q How did you know the bids were going to be under ten thousand dollars?

A We had the figures and estimates from previous jobs. We had the quotations. We kept them up to date, and

we felt that we could get the fifty thousand square feet for under \$9,999, and we fell a little short, didn't question -- we should have said forty-eight thousand; we probably would have been in good shape.

Q I am just trying to find out how you determined in advance not to advertise by finding out eventually the bid was under \$9,999, if that is the fact. As you stood and looked at the problem, how did you know where you were going to wind up, because that is apparently what you did when you made the determination not to advertise in a manner specified by law.

A We had a measured distance of an area we wanted to cover, and we felt that fifty thousand square feet could be covered for \$9,990.

Q Was the total amount paid for that paving; do you recall?

A I do not recall.

Q It would appear there are two checks having been drawn to Sim J. Harris Company, one for \$9,990.12, and another one for \$632. Was that for the same -- for payment on the same contract?

A No, it was for another job, and I cannot tell you exactly what it is. Probably Mr. Terwilliger could give you the information, but at times, we might have a new entranceway or something that -- as long as contractors were on a job, we would have him take care of a new project

that was not under consideration at the time.

Q Well, then, you didn't get an oral quotation from more than the man that was on the job for this \$632 job. That is over five hundred --

A I would say in this particular case I do not know whether we did or did not.

Q But it's your testimony the \$632 was for a separate piece of work?

A Right.

Q And that the only amount paid for the paving of the fifty thousand square feet was in fact the \$9,990.12.

A You are almost correct, Senator. Fifty thousand feet wasn't received; it was some short of fifty thousand that was received for \$9,990.12. If you figured it out a square foot, which the figures were given there, we could probably come to the exact amount.

Q BY MR. WATERS: It would appear from the books of the District that these two payments were connected with the one project, and it would appear from the contract that they were connected with the project, since they make up a total of about the \$10,490 as called for, a little bit more.

A Actually, in effect, they make \$10,622.12.

Q Yes.

A It's quite a bit more.

Q Well, as a matter of fact, Mr. Mannen, in

examining the books and the contracts and the documents of the District, there were numerous cases where a contract would be entered into, and subsequently, the payments made exceeded the amounts of the contracts?

A What type of contract are you talking about now?

Q Construction contracts.

A There were probably some changed orders from time to time, yes.

Q Did the minutes of the Board of Directors reflect any authorization for changed orders?

A I would say probably they did in part of the time; part of the time. Probably be -- sometimes those things were not all taken care of in the writing down of the minutes.

Q Then, in connection with the minutes of the District, were all bills submitted to the Board for approval prior to payment?

A No, sir.

Q Why not?

A Because we took the discounts where possible, and always paid the bills before the tenth of the month, and the Board usually did not meet by that time, and the Board approved the bills after they were paid.

Q Which discounts are you referring to?

What type of discounts?

A A cash discount, ten percent -- or by the tenth of the month.

Q What percent?

A I said by the tenth day of the month. Excuse me. I'm sorry.

Q What would the cash discount be, Mr. Mannen?

A I would say it probably varied different jobs.

Q Between what and what?

A Probably between one and five percent.

Q Can you tell the committee of any specific instance where the District ever got a cash discount in connection with any purchase which was then paid in the manner you described?

A No, I couldn't, Mr. Waters, and I don't think you should expect me to either, because I do not have the bills at my disposal. I am certain that with all the investigation that you did, that you found many of them where a cash discount was taken.

Q I am sorry. I didnot. I was just wondering, since I was unable to find, with the exception of one instance, any evidence of any cash discounts on that basis, if you could remember any.

A There are many of them there, Mr. Waters, and I will be glad to locate them.

Q Referring back to the construction contracts, is it not true that in certain cases, the work to be done was split so that there would be two separate jobs, both coming under the \$10,000 amount?

A I don't believe so. There was one notable job that was done, and I am quite proud of the fact that I was able to save the State of California over a hundred thousand dollars. We had a bid before -- or a project before the Division of Architecture, and the estimates on building three barns was \$195,000.

In completing the project, it was completed in two projects; one year, with two barns and but a temporary roof, and the next year one barn with three complete roofs. There was no loss even on the temporary roof. That job was completed for \$70,000. By doing it -- handling it locally under a \$35,000 maximum bidding provision, and quite often, we probably split other jobs in attempting to save the State money.

Q I am talking about in connection with some of the paving contracts. Don't you recall that there was one instance where you got bids that exceeded the ten thousand dollars and then rejected them and split the -- or reduced the amount of paying to be done, and then -- and then asked for new bids for a lessor area?

A That probably did happen, yes, Mr. Waters.

Q Mr. Mannen, there were also projects in which there were no written bids, and there were no service agreements. What was the reason for that?

A I can't recall, Mr. Waters.

Q I might say on February 6, 19 -- excuse me; I

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